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REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

PROPOSED LEGISLATION AUTHORIZING FUNDS FOR THE EXPORT ADMINISTRATION ACT

MARCH 7 AND 28, 1990

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REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

WEDNESDAY, MARCH 7, 1990

U.S. Senate, Committee on Banking, Housing, and Urban Affairs, Subcommittee on International Finance and Monetary Policy,

Washington, DC.

The subcommittee met at 10 a.m., in room SD-538, Dirksen Senate Office Building, Senator Paul S. Sarbanes (chairman of the subcommittee) presiding.

Present: Senators Sarbanes, Riegle, Cranston, Garn, Heinz, Bond, and Mack.

OPENING STATEMENT OF SENATOR SARBANES

Senator Sarbanes. Today the Subcommittee on International Finance and Monetary Policy holds a hearing to review the administration views with respect to the reauthorization of the Export Administration Act.

Later in the month we will hold another hearing to hear from witnesses from the private sector.

The Export Administration Act, then known as the Export Control Act, was first passed by Congress in 1949. This legislation granted the President broad authority to impose controls on exports for reasons of national security, foreign policy, and short supply.

The national security export controls, which will be the focus of today's hearing, were designed to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States.

The coordinating committee on multilateral export controls, known as CoCom, was also formed in 1949 by informal agreement of the NATO countries and Japan. The purpose of CoCom was to coordinate allied export control policies as part of an effort to prevent sensitive technology from reaching the hands of potential adversaries.

Over the years the act has been reauthorized, amended in significant respects on occasions, and less than 2 years ago the Congress undertook a major revision of the Export Administration Act in the Omnibus Trade and Competitiveness Act of 1988.

As my colleagues will recall, this subcommittee and the full committee spent a considerable amount of time and energy and attention on this issue at that time.

During revision, we sought to respond to concerns that controls were being placed on technologies that were no longer of strategic value, to the detriment of the competitive position of U.S. exporters. As a result, the trade bill included provisions which sought to streamline the list of controlled goods and technologies and reduce controls on trade with CoCom countries, also leaving the administration broad discretion to reduce controls even further if it was deemed appropriate.

Recent developments in Eastern Europe and the Soviet Union have raised questions about the export control regime developed under the Export Administration Act and the multilateral export control regime organized under CoCom. As we know from reports both in the press and those that members have received, at the CoCom meeting last month in Paris a number of proposals were put forward that would reduce controls on technology which CoCom imposes on trade with the Eastern Bloc.

CoCom members are also negotiating an agreement under which export licensing requirements for trade among CoCom members themselves would be sharply reduced.

This morning the subcommittee has an opportunity to review the status of these developments with representatives of the Commerce, State and Defense Departments and any implications they may have with respect to reauthorization of the Export Administration Act.

The subcommittee will look at the implementation of changes made by the 1988 trade bill and consider what further changes might be deemed wise.

As I indicated at the outset, on March 28, the subcommittee will hold a hearing with industry representatives and outside experts on this issue.

We are pleased to have with us this morning a panel consisting of Dennis Kloske, the Under Secretary of Commerce for Export Administration; Allan Wendt, the Senior Representative for Strategic Technology Policy in the Department of State; and Stephen Hadley, the Assistant Secretary for International Security Policy at the Department of Defense.

Gentlemen, before I turn to you for your statements, I will turn to my colleagues for any opening remarks they may wish to make.

Senator Heinz.

[The prepared statement of Senator Sarbanes follows:]

PREPARED STATEMENT OF SENATOR SARBANES

Today the Subcommittee on International Finance and Monetary Policy holds a hearing to review the administration's views on the reauthorization of the Export Administration Act.

The Export Administration Act, then known as the Export Control Act, was first passed by Congress in 1949. The legislation granted the President broad authority to impose controls on exports for reasons of national security, foreign policy, and short supply. The national security export controls, which will be the focus of today's hearing, were to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country, or combination of countries, which would prove detrimental to the national security of the United States.

The Coordinating Committee on Multilateral Export Controls, known as CoCom, was also formed in 1949 by informal agreement of the NATO countries and Japan. The purpose of CoCom was to coordinate allied export control policies as part of an effort to prevent sensitive technology from reaching the hands of potential adversaries.

Less than 2 years ago the Congress undertook a major revision of the Export Administration Act in the Omnibus Trade and Competitiveness Act of 1988. At that time the Congress attempted to respond to concerns that controls were being placed on technologies that were no longer of strategic value to the detriment of the competitive position of U.S. exporters. As a result, the trade bill included provisions which sought to streamline the list of controlled goods and technologies and reduce controls on trade with CoCom countries while leaving the administration broad discretion to reduce controls further if it was deemed appropriate.

The recent developments in Eastern Europe and the Soviet Union have raised questions about the future of the domestic export control regime developed under the Export Administration Act and the multilateral export control regime organized under CoCom. At a midlevel meeting of CoCom last month in Paris, a number of proposals were put forward that would significantly reduce the controls on technology which CoCom imposes on trade with Eastern Europe and the Soviet Union. The CoCom members are also negotiating an agreement under which export licensing requirements for trade among CoCom members would be drastically reduced.

This morning the International Finance Subcommittee will review the status of these developments with representatives of the Commerce, State, and Defense Departments, and the implications they may have for the reauthorization of the Export Administration Act. Specifically, the subcommittee will review the implementation of the changes made by the 1988 trade bill and consider the extent to which any further legislative changes are needed in the Export Administration Act.

Later this month, on March 28, the subcommittee will hold a hearing with industry representatives and outside experts on the reauthorization of the EAA.

We are pleased to have with us to testify this morning Dennis Kloske, Under Secretary of Commerce for Export Administration; Allan Wendt, Senior Representative for Strategic Technology Policy, Department of State; and Stephen Hadley, Assistant Secretary of Defense for International Security Policy.

OPENING STATEMENT OF SENATOR HEINZ

Senator HEINZ. Mr. Chairman, first, let me commend you and congratulate you on holding this hearing. It occurs at a time without precedent in post-war history.

I say that because the political disintegration of the communist bloc and the communist regimes of each of the former satellites in Eastern Europe has occurred more rapidly than anybody did or could have imagined a year ago. The disaster of their economies is also now clear even to the most committed of Marxists, and the changes compel us to take a sharply different assessment of the national security threat from Eastern Europe and to a lesser extent from the Soviet Union itself.

Now, as always, rapid change provides for both opportunities and dangers. The one thing that is clear is that we cannot stand still. We've got an opportunity to seize the initiative among our CoCom allies in recognizing the changes that have occurred and most of all in leading the Western Alliance toward policies that are dedicated to freedom, democracy and market economies throughout Europe, East and West.

The dangers of standing still are both economic and political. Economically, standing still means ceding major market opportunities in Eastern Europe to our Western European competitors. This is a particular problem in critical sectors where we are competitors, like machine tools or computers or telecommunications. In a global economy, we can't afford to ignore any market, particularly when our past reason for doing so no longer exists.

Politically, standing still means the loss of our leadership of the Western Alliance and the potential disintegration of CoCom and the common purpose that's united us for more than 40 years.

Accompanying that loss would be our credibility with our allies in areas where a national security threat still continues to exist.

So far, I'm sorry to say, I don't think we've met this challenge. Despite some progress by the Bush administration, in my judgment, it continues to lag at least 6 months behind the Congress. Not that the Congress is way out front, because we lag well behind the American business community. And as a nation, we lag light years behind our European allies. If you will, the train has started moving and it's rapidly gaining speed. Without a new policy we are going to be left standing in the station wondering what to do with our baggage.

To paraphrase or to borrow from the President of Czechoslovakia, Vaclev Havel, you might say that where export policy is concerned, consciousness precedes exporting, not the other way around as the old cold warriors would have it.

These hearings, Mr. Chairman, provide us an opportunity to determine what progress has been made, perhaps to develop the kind of policy we need. I believe it is important for us to focus in particular today on several key issues.

The first that I would suggest as a focus is rationalizing our East-West licensing policy. I have introduced with some of my colleagues legislation to decontrol all categories to the China greenline level for Eastern European countries that commit to eliminating the Soviet intelligence presence within their borders.

The administration should tell us what threat or what practices prevent us from treating these nations at least as well as we do the People's Republic of China. There is no doubt that when it comes to human rights these nations are so far ahead of the People's Republic of China that you almost wonder where our priorities could possibly lie.

The second key issue. Streamlining licensing within CoCom. We have been talking about it for years. We took steps to achieve it in the 1988 bill, but frankly very little has happened, and EC 1992 will quickly take over this process and present us with an accomplished fact unless we take the lead now, announce and implement a more forthcoming policy, and also pay some sustained attention to improving enforcement within Europe.

Third, improving our process of export administration here at home. Let me just say briefly about that that no one who has experienced our licensing system has anything good to say about it. We've met the enemy and they are us.

Last year, Mr. Chairman, President Bush heralded the new era when he called for moving beyond containment. So far what seems to be contained are our exporters. Most of the movement at this point seems to have been in speeches and not in policies. The result is that others are moving for us and we are going to soon find ourselves in the position of having others negotiating the ground rules for the transfer of our technology at the cost of our leadership in the alliance and our lack of competitiveness in the business community. None of us should relish the hardly comic prospect of the U.S. crying from the back of the CoCom pack, "Follow me." As any dog-sledder will tell you, if you're not the lead dog, the scene never changes.

Thank you, Mr. Chairman.

Senator **Sarbanes**. We are pleased to have the chairman of the full committee with us, Senator Riegle.

OPENING STATEMENT OF CHAIRMAN RIEGLE

Senator **Riegle**. Thank you, Mr. Chairman.

I want to first commend you, Senator Sarbanes, for scheduling today's hearing to review the operation of our country's national security export control system which, of course, is authorized by the Export Administration Act.

That act provides a legal basis for the export control regime that we have had in place since the beginning of the cold war in the late 1940's. That regime has been used to deny the Soviet Union and its Eastern European allies access to high technology and commercial goods which would have military potential.

The act must be renewed periodically and I think it's been noted earlier it will presently expire on September 30, this year if not reauthorized.

Now Congress has never sought to micromanage our export control system. The Export Administration Act, therefore, delegates to the executive branch the authority to administer controls in the manner it deems most appropriate to safeguard our national interests. I must say the testimony before this committee in 1987, however, revealed that the Reagan administration's export control regime was really in total disarray.

The Commerce, State, and Defense Departments were unable to settle their differences as to what technologies were truly militarily critical. There was no leadership that I could see from the White House at that time in resolving that dispute.

As a result, American companies lost many sales of finished goods due to license delays and outright denials. In addition, manufacturers in Western Europe turned to non-American suppliers for key components of their products because using U.S. parts made their whole product subject to our burdensome re-export controls.

Our control regime that was ostensibly designed to help our national security was actually undermining it by weakening the competitive strength of our highest technology companies.

The Congress was forced to remedy the situation by making major revisions to the Export Administration Act in the omnibus trade bill.

Fast developing events in Eastern Europe and the Soviet Union now raise questions about what type of export control regime makes sense in a new era of East-West relations. Some understandable apprehensions have been voiced that present controls subordinate our country's economic competitiveness to military concerns at a time when the former and not the latter are in ascendancy.

My own impression is that the administration as a whole is not adapting to events in Eastern Europe and the Soviet Union quickly enough. As a result, we risk isolating ourselves within Cocom and perhaps even destroying the viability of that organization through which we coordinate controls with our allies.

While I recognize there may still be a convincing rationale for an export control regime, I think the administration now must be put on notice and everyone at the table and their people that they here represent that if the interagency squabbling prevents the development of credible decontrol proposals, then the Congress will be forced to act once again because we can no longer permit the competitive posture of our most critical industries to be damaged by unrealistic controls that result from the fact that our highest level of policy makers fail to focus effectively on these important issues.

So I very much look forward to hearing from today's witnesses representing the administration and to the hearing that Chairman Sarbanes has referenced on March 28, in which we will be hearing from outside experts and witnesses from industry.

I want to just conclude by saying to you, Senator Sarbanes, how much I appreciate your leadership in this area, how important I think it is. I think the hearings that you have put together will help us greatly in marking up the legislation to reauthorize the Export Administration Act.

Senator SARBANES. Thank you very much, Senator Riegle.

Senator Mack, did you have an opening statement?

OPENING STATEMENT OF SENATOR MACK

Senator MACK. Thank you, Mr. Chairman. It will be brief.

I'm coming at it from maybe a little bit different perspective, but I am very concerned that we are rushing to decontrol technologies without any strategic justification or even analysis.

I am all for helping newly democratic nations develop their economies, but I don't see how we can help perestroika by helping the Soviets build better tanks, better missiles and airplanes. I don't believe the American people would think it was a good idea to increase our defense burden while slashing our defense budget.

So I will also be looking forward to the testimony from today's witnesses. Thank you.

Senator SARBANES. Senator Cranston.

OPENING STATEMENT OF SENATOR CRANSTON

Senator CRANSTON. Thank you, Mr. Chairman.

I appreciate having the opportunity to join your subcommittee today for this very important hearing, and join in Senator Riegle's applause for your leadership on this front.

I do have an opening statement I ask be made part of the record.

Senator SARBANES. Without objection, it will be so ordered.

Senator CRANSTON. Just very briefly I would say the following, that the export control regime is very important to the high tech companies in my State as well as in the country generally.

I recently introduced legislation to reform the system. I look forward to working with your subcommittee and the full committee to see that we reauthorize the Export Administration Act in a manner that balances our national and economic security interests while recognizing and responding to the dramatic changes that have occurred in the world in the past year.

I have a series of questions for the three witnesses. Unfortunately, I doubt that I am going to be able to stay for the entire hearing.

I ask that you respond in writing in whatever time sequence is ordered by the chairman.

[The prepared statement of Senator Cranston follows:]

PREPARED STATEMENT OF SENATOR CRANSTON

Mr. Chairman, I commend you for calling this oversight hearing and I appreciate having the opportunity to participate today with the Subcommittee on International Finance and Monetary Policy.

Reauthorization of the Export Administration Act is one of the most important actions this committee will take in 1990. In order to do so in a constructive manner, it's essential that careful oversight be exercised. The first thing we must know is: How are the reforms enacted as part of the Omnibus Trade and Competitiveness Act of 1988 being implemented? I am glad we have witnesses from the three relevant departments here today. I look forward to hearing from them as well as to getting the perspective from industry at the next hearing later this month.

Once we have examined how the administration has handled previous reforms, we need to ask: Where should we be going from here? The changes throughout the world in the past year have far-reaching implications for the Export Administration Act. This is no time to sit back and be complacent. We must act quickly and with leadership to address these pressing issues. The U.S. has a vested interest in the economic and political reforms in the Soviet Union and Eastern Europe. As such, Congress must review whether the administration is taking the lead or just watching events from the sidelines. We should ask: What are the dangers of inaction? Will CoCom fall apart unless changes occur in the U.S. position?

While I look forward to hearing from the administration today on these issues, frankly, I am skeptical. It's my opinion that the administration has been asleep at the switch. Only when it was clear that our CoCom allies would no longer tolerate U.S. intransigence did the U.S. act at all. And, from all accounts, the U.S. position at CoCom last month did not go far enough for our allies; the U.S. is still the "odd-man out".

Mr. Chairman, I believe we have a unique opportunity this year to make significant reforms to the Export Administration Act. I know the administration representatives will advocate a simple, 1-year extension of the act. They will say that they currently have the authority to make the changes for Eastern Europe that they envision. No one likes micromanaging, but the history of this act clearly demonstrates that virtually no action is taken unless Congress forces it. Even then, the administration tends to drag its feet and get bogged down in interagency disputes. Therefore, I say we must act now—and we must act decisively.

Last week I introduced S. 2207, the Export Administration Reform Act. My bill builds on the reforms made in the trade bill by providing a loosening of controls where appropriate and by making additional process reforms to ensure a smoother, more rational control system.

I look forward to working with this subcommittee and the full committee to see that meaningful reforms are made to the Export Administration Act this year.

Senator **SARBANES**. Thank you very much.

Senator Garn.

Senator **GARN**. Thank you, Mr. Chairman. I appreciate the time. I am involved in a markup in the Energy Committee and that's why I was late and will leave early. So I will be very brief.

I can't really say that I welcome the start of another effort to fix the Export Administration Act, but I am worried about U.S. export control policy and it certainly is time that the Banking Committee resume active EEA oversight.

Other than making one more statement, Mr. Chairman, I would ask that the remainder of my statement be placed in the record. That statement is, this is a very critical policy area that I fear is being ignored by the White House. I ask that the remainder of my statement be placed in the record.

Senator **SARBANES**. It will be so included.

STATEMENT OF SENATOR GARN

Senator **Garn**. Mr. Chairman, I can't really say that I welcome the start of another effort to fix the Export Administration Act. But I am worried about U.S. export control policy and it is time the Banking Committee resumed active EAA oversight.

This is a critical policy area that I fear is being ignored by the White House and responsible Cabinet officials. In the last year, three major initiatives were launched in which strategic trade was an important issue—the administration's national security review, the Malta Summit, and US-Soviet trade negotiations. I have not heard a mention of export control policy in any of them. Today, you invited the three agencies responsible for the export control system to send senior political level representatives to brief the committee. Two of the three could not produce their Under Secretary.

The interagency policy process is not working. For 2 years the United States was committed to "streamlining" the CoCom control list but never went to a CoCom meeting with an agreed U.S. position. Now under the pressure of change in Eastern Europe, we are scrambling for a policy. We are calling the fact that we even took a position to the February CoCom meeting "leadership" although it seems to have been rejected out of hand at CoCom.

The interagency process is producing worse, rather than better, policy. There is a rush to promote economic relations with the Soviet Bloc without regard to the national security implications. State and Commerce are vying to be the lead export promotion agency and fighting over staffing in Eastern Europe embassies. State and Commerce are also competing to be "in charge" of the export control process and to receive credit for decontrol within CoCom. Defense seems to be on orders to "stand down" on export control policy. They are practicing "collegiality," whatever that means.

Changes in policy being negotiated in CoCom are being justified solely in terms of European politics, not national security. We are doing our review of national security implications of decontrol after the fact. In my view, the process is not working and the policy is in disarray. We do not know what we want or how to get it. I believe it is time for fundamental reform of the export control process, and I will be pursuing adoption of S. 1796, the reform legislation I introduced with Senator Heinz, during this Congress.

Senator **Riegle**. If you would yield, I may say I think that will make a run on the rest of your statement over at the press table or it ought to if it didn't.

Senator **Garn**. Well, the rest of it gets even more graphic.

Senator **Sarbanes**. I'm sure that's what Senator Riegle was assuming when he made his comment.

Before we begin I have a statement of Senator Sanford.

OPENING STATEMENT OF SENATOR SANFORD

Senator **Sanford**. Thank you, Mr. Chairman and I would like to thank our panel of witnesses for appearing before us today. This hearing marks the start of our efforts to address a very important issue—export controls—in the context of our need to reauthorize the Export Administration Act this year. With rapid changes taking place throughout Eastern Europe and other parts of the world, it is essential that we structure a system that will allow our manufacturers to export the needed technology and goods to these opening markets, while not jeopardizing the national security of our country.

Almost 3 years ago, as part of the Omnibus Trade Act and in light of the report of the National Academy of Sciences, "Balancing the National Interest: U.S. National Security Export Control and Global Economic Competition", this committee held a series of hearings and reported out important changes to the Export Administration Act. While I applaud the administration for their efforts to implement those changes, I am concerned that we still have a system marred by bureaucratic infighting and sluggish action.

Given all of the changes in Eastern Europe and the need for CoCom to reassess its role in a much changed world, I hope that the administration will work with us to put together a system of multilateral export controls with internationally agreed upon standards and harmonized enforcement mechanisms for export controls. We cannot permit CoCom to become outdated and overrun by the events of the day, nor can we permit the United States to maintain such excessive controls that it jeopardizes the competitiveness of so many of our manufacturers.

It is also imperative that as we take another look at the Export Administration Act that we do so with a goal of improving the process so that it better reflects the current state of technology available here and in the rest of the world and that we develop a system that is flexible enough to respond quickly to the changes taking place in the world. I look forward to hearing the testimony of our witnesses as we begin this process.

Thank you, Mr. Chairman.

Senator **SARBANES**. Gentlemen, we are ready to hear from you. Secretary Kloske.

STATEMENT OF DENNIS E. KLOSKE, UNDER SECRETARY FOR EXPORT ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. **KLOSKE**. Thank you, Mr. Chairman, and good morning, Senators.

There is no doubt that we are entering a completely new historical period which basically has been kicked off in the last 18 months. Almost on a daily basis, Mr. Chairman, we are witnessing momentous changes in relations between the East and the West.

At the same time that we are facing these momentous changes in the East-West context, we have to always take into account the objective economic circumstances in the West-West context have changed dramatically as well.

The key challenge to the regulatory regime in the 1990's for this Nation and within CoCom will be to successfully manage the converging political and technological revolutions that we face today.

In the East-West context, we are now witnessing the dissolution of the post-war era. The Soviet Union is in retreat and its main objective today is domestic retrenchment concentrating on political and economic reforms.

At the same time and because of the problems that the Soviet Union faces today, we are witnessing the sweeping changes in liberalization in Eastern Europe and linked to that the emergency of a reunified Germany.

These three developments will certainly transform the historical landscape as we've known it since 1946.

As a direct consequence, Mr. Chairman, it is incumbent upon all of us to review and reevaluate assumptions about the strategic threat which emerged to this nation beginning in the post-war era. As far as I'm concerned and at least based on my experience as a former senior DOD official who led two strategic reviews for two Secretaries of Defense, the Eastern European component of the Warsaw Pact is in a total shambles and poses not a threat to anyone. Their main concerns are political and economic reforms.

In terms of the Soviet Union, I think we still need to be quite circumspect, but needless to say, I will defer to the Secretary of Defense and the Director of the Central Intelligence Agency to provide us further guidance on that matter.

In terms of the West-West context—and I think we need to link it to the reforms and sweeping changes that are taking place in the East-West—I think it is important for all of us to understand that this nation enters the 1990's in very different economic circumstances. Unlike 1946 when there was only one superpower both militarily and economically, the United States as it enters the decade of the 1990's is no longer the dominant player in the area of technology. We have seen with astonishing rapidity how Japan and the Pacific Rim and a reinvigorated Western Europe and the Atlantic Basin have emerged as key players and competitors of American industry.

At the same time and sweeping in behind them we are seeing new industrial players who are aggressively entering the world market of high quality and high technology manufacturing who are not subject to CoCom guidelines.

Interestingly enough, based on my experience as the Under Secretary for the Bureau of Export Administration where I spend an enormous amount of time with the industry to understand its new products that are being brought to the market, I am convinced that this nation is entering a second technological revolution.

The astonishing speed that is taking place in technology in recent development, for example, in the high performance computer area is going to revolutionize industrial and technology design and it is incumbent upon us and the regulatory regime that we fully understand these changes so that we can make our measured judgments.

It is my view, Mr. Chairman, that it is vitally important for the regulatory regime in this Nation to align itself with these new circumstances and the failure to recognize the converging revolutions, both in the political realm and the East-West context and the technology and industrial and trade realm in the West-West context, will generate severe penalties for U.S. national and economic security.

When I assumed my new position at Commerce, I was amazed at the full extent of the Bureau of Export Administration's pivotal role in overall U.S. national security and competitiveness. It may not be a widely known fact, but BXA, my bureau, regulates approximately $200 billion of U.S. exports per year and most of it happens to be in the high technology arena. We do this through a variety of different licensing authorities, ranging from individual validated export licenses to bulk licenses, distribution licenses, and broad general licenses.

Clearly, how well we administer the licensing process has a direct impact on U.S. national security and on U.S. industry which faces intense competition from foreign sources today cannot be ignored. The ability to meet shipping and contractual deadlines can spell life or death for individual transactions. More importantly, it can have a long-term impact on U.S. industry's reputation as a reliable supplier.

We cannot overlook this fact because the maintenance of a strong and competitive U.S. industrial sector is fundamental to U.S. national security. Commerce's mandate under the Export Administration Act is to maintain an export control program that weighs both national security and economic security, because the two in the 1990's are inseparable.

I am proud to say that BXA has achieved a licensing system that meets that mandate. We have instituted an automated export licensing system that is acknowledged both in the United States and abroad as one of the best in the world. It incorporates information from a wide variety of sources, including the intelligence community, on both known and suspicious end-users. Our software is specially designed to recognize deviations in the way names are spelled. Any license application that contains such a problem name is automatically flagged by the computer. The computer is programmed to refuse issuance of a license until our Office of Export Enforcement has reviewed the application and removed the flag on the case.

This is a unique enforcement tool. The primary goal of our enforcement office, which was created to enforce the U.S. export control law solely, is to prevent diversions from occurring. This office also has a strong field presence, with eight regional offices interacting closely with the business community, sensitizing them to the requirements of law and developing leads on transgressors. Our agents actively pursue transgressors through both criminal and administrative cases.

From a licensing perspective, BXA's automated system enables our licensing officers to more thoroughly review applications and compare them with previously granted licenses. This ensures a higher level of consistent licensing decisions. Our licensing officers currently have access to over 1.4 million cases in our database.

There is no need to sacrifice quality for quantity. Faced with a large volume of applications, we applied our resources to developing the highest quality system in the world, while achieving substantial gains for U.S. competitiveness. For example, in 1984, license applications were processed on an average of 60 days. Now, the average processing time is 16 days with better quality control than ever. This translates into reduced costs of capital and warehousing for U.S. exporters—and last year we estimated we saved U.S. industry around $1.5 billion—and creates a more level playing field for them. United States industry has a legitimate right to expect fair treatment from their Government.

At the same time, Congress mandated many important export control reforms in the Omnibus Trade and Competitiveness Act to ensure fairness for U.S. exporters who face more stringent export controls than their foreign competitors.

Because of the lengthy interagency review and rulemaking process, BXA focused on implementing the provisions that would bring the greatest amount of relief to industry in the nearest time possible. For example, Mr. Chairman, we removed unilateral national security controls, eliminated licensing requirements for some AEN-level items for the Free World and all PRC "greenline"-level items for export to CoCom. We eliminated reexport controls on foreign produced products containing 25 percent de minimis U.S. parts and components; and we instituted quarterly review of the control list. We are in the process of formulating regulations to decontrol medical and scientific equipment, removing licensing requirements for intra-CoCom trade, and defining a supercomputer.

On the latter point, Mr. Chairman, you would think that defining a supercomputer would be a relatively simple task. This is something that I have been personally engaged in in the last 2 months. On the surface, it certainly looks that way. But for regulatory purposes, it is not. First, different agencies have different notions on where the line should be drawn. Second, other regulations ride on the supercomputer definition. Specifically, supercomputers would not be exempt from reexport controls for intra-CoCom trade, nor could there be a de minimis level set for U.S. parts and components if they are used in a foreign-produced supercomputer. As a result, the interagency process came in with proposed levels for defining supercomputers that were quite low.

We published these proposed levels in order to solicit public comment. I personally chaired public hearings at select high technology localities around the Nation. I discovered two very important things. First, that this Nation, as I mentioned earlier, is in the midst of a second technological revolution which most people in Washington don't seem to recognize. Second, we in the Government aren't really aware of this phenomenon.

Why do I say this? Because we still treat the Cray I as a supercomputer. Yet, this computer which is 15 years old is no longer manufactured. In fact, Mr. Chairman, the Cray Co. is in the process of donating a Cray I supercomputer to the Smithsonian Air and Space Museum. Second, it is also on display at the Deutsches Museum in Munich, Germany.

My point is, not knowing what the technology trends are in this Nation, the interagency body uses a reference point such as the Cray I, and moves up the performance scale somewhat to set a new supercomputer line. In this case, the Cray I's performance level of 160 megaflops was moved up to 300 megaflops. It took over 18 months to reach agreement on that level.

But is that a realistic level? This much I have learned: The U.S. semiconductor industry, fighting for its survival against stiff foreign competition, is making faster, denser chips. The Intel i860 chip, which I currently have in my hand, Mr. Chairman, can operate at 66 megaflops. Some time this year this chip will be at 100 megaflops. That means that a laptop computer with two or three of these chips would be deemed a supercomputer since it is faster than a Cray I.

Regulatorily, what should we do? Deny or slow down the export of U.S. chips to Free world destinations? Somebody once mentioned to me that perhaps we should nationalize Intel. The U.S. semiconductor industry is export-dependent. If it cannot export, it will be overtaken by its foreign competitors with whom it is competing neck-to-neck. Should we stop or slow down the export of personal computers and workstations because they will exceed the 300 megaflop level? We are talking about commercial Free world trade. Again, we face a computer industry that is export-dependent. If they cannot export, they, too, would fold. Worst, we would have gained nothing for losing this vital industry because our foreign competitors are making machines just as fast as ours, and they face few or no constraints in shipping to noncommunist destinations.

This supercomputer definitional exercise is not a decontrol exercise. It is to impose an extraordinary control regime on top of the existing controls. But I explained this process of our search for a supercomputer control level because it is similar to what the interagency process goes through in achieving consensus on U.S. proposals for CoCom.

My colleague, Ambassador Wendt, will be addressing in full detail the specific proposals and ongoing efforts at CoCom. Rather than going into that amount of specificity with you, I would prefer to share some broad thoughts on where we are and where we should be going with CoCom.

First, there is no doubt that our allies are demanding that we recognize the technological revolution that has been sweeping worldwide. They view that unless serious streamlining occurs, they will be unable to defend the credibility of the control list to their legislatures and their domestic companies. Bear in mind, Mr. Chairman, some of the entries on the control list had not been streamlined since 1974, while technological advances have been dramatic, if not downright revolutionary.

Second, Western Europe is anxiously poised to assist Eastern Europe and the Soviet Union achieve greater economic stability in order to further their democratic reforms. They are on the same continent. They are traditional trading partners and share a history going back centuries. The case of East and West Germany is even more compelling. These two countries will unify. For export control purposes, how should they be treated?

Third, with the dramatic changes occurring in Eastern Europe and the Soviet Union, our CoCom allies view the strategic threat from that part of the world in a more optimistic way. Indeed, both Defense Secretary Cheney and CIA Director Webster have also aired their views on the Soviet strategic threat last week and, needless to say, the Commerce Department will stay tuned to obtain further guidance from them.

Fourth, the viability of CoCom is more important to our security interests now than ever. As the realignment of power in the East occurs and accelerates and nations there seek to build peaceful, commercial industries, it is critical that each CoCom country carefully review its commercial technology transfers to the East. To do this, CoCom must continue to exist in the 1990's, and we must recognize that to preserve CoCom we need to recognize the widespread technological advances that are reflected in commonly available items of trade. Then we can all devote our resources to controlling truly strategic items.

The export control challenge of the 1990's is how best to effectively manage the converging political and technological revolutions that are occurring almost on a daily basis. The key, Mr. Chairman, to this challenge will be forged only when we reach consensus on the meaning of the term "strategic."

Thank you very much.

[The complete prepared statement of Dennis E. Kloske follows:]

STATEMENT OF
DENNIS E. KLOSKE
UNDER SECRETARY FOR EXPORT ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
Wednesday, March 7, 1990

Mr. Chairman, this marks the first time I have testified before your Subcommittee since my confirmation last September. I am glad for the opportunity to share with you the knowledge and insights I have gained in the past six months as you consider reauthorization of the Export Administration Act.

When I assumed my new position at Commerce, I was amazed at the full extent of the Bureau of Export Administration's (BXA) pivotal role in overall U.S. national security and competitiveness. It may not be a widely known fact, but BXA regulates approximately $200 billion of U.S. exports per year. We do this through a variety of different licensing authorities, ranging from individual validated export licenses to bulk licenses, distribution licenses, and broad general licenses, such as general destination (G-DEST) licenses.

Clearly, how well we administer the licensing process has a direct impact on U.S. national security, and on U.S. industry which faces intense competition from foreign sources. The ability to meet shipping and contractual deadlines can spell life or death for individual transactions. More importantly, it can have a long-term impact on U.S. industry's reputation as a reliable supplier.

We cannot overlook this fact because the maintenance of a strong and competitive U.S. industrial sector is fundamental to U.S. national security. Commerce's mandate, under the Export Administration act, is to maintain an export control program that weighs both national security and economic security, because the two are inseparable.

I am proud to say that BXA has achieved a licensing system that meets that mandate. We have instituted an automated export licensing system that is acknowledged as one of the best in the world. It incorporates information from a wide variety of sources, including the intelligence community, on both known and suspicious end-users. Our software is specially designed to recognize deviations in the way names are spelled. Any license application that contains such a problem name is automatically flagged by the computer. The computer is programmed to refuse issuance of a license until our Office of Export Enforcement (OEE) has reviewed the application and removed the flag on the case.

This is a unique enforcement tool. The primary goal of our enforcement office, which was created to enforce the U.S. export control law solely, is to prevent diversions from occurring. OEE also has a strong field presence -- with eight regional offices interacting closely with the business community, sensitizing them to the requirements of law and developing leads on transgressors. Our agents actively pursue transgressors through both criminal and administrative cases.

From a licensing perspective, BXA's automated system enables our licensing officers to more thoroughly review applications, and compare them with previously granted licenses. This ensures a higher level of consistent licensing decisions. Our licensing officers currently have access to over 1.4 million cases in the database.

There is no need to sacrifice quality for quantity. Faced with a large volume of applications, we applied our resources to developing the highest quality system in the world, while achieving substantial gains for U.S. competitiveness. For example, in 1984, license applications were processed on an average of 60 days. Now, the average processing time is 16 days with better quality control than ever. This translates into reduced costs of capital and warehousing for U.S. exporters, and creates a more level playing field for them. U.S. industry has a right to expect fair treatment by their Government.

Implementation of the Omnibus Trade Bill

Congress mandated many important export control reforms in the Omnibus Trade and Competitiveness Act (OCTA) to ensure fairness for U.S. exporters who face more stringent export controls than their foreign competitors.

Because of the lengthy interagency review and rulemaking process, BXA focused on implementing the provisions that would bring the greatest amount of relief to industry. For example, we removed unilateral national security controls; eliminated licensing requirements for some AEN-level items for the Free World and all PRC "greenline"-level items for export to COCOM; eliminated reexport controls on foreign produced products containing 25 percent de minimis U.S. parts and components; and instituted quarterly review of the control list. We are in the process of formulating regulations to decontrol medical/scientific equipment, removing licensing requirements for intra-COCOM trade, and defining a supercomputer.

On the latter point, you would think that defining a supercomputer would be a relatively simple task. On the surface, it looks that way. But for regulatory purposes, it is not. First, different agencies have different notions on where the line should be drawn. Secondly, other regulations ride on the supercomputer definition. Specifically, supercomputers would not be exempt from reexport controls for intra-COCOM trade, nor could there be a de minimis level set for U.S. parts and components if they are used in a foreign-produced supercomputer. As a result, the interagency process came in with proposed levels for defining supercomputers that were quite low.

We published these proposed levels in order to solicit public comment. I personally chaired public hearings at select high technology locales around the country. I discovered two very important things: First, we are currently in the midst of a second technological revolution. Second, we, the Government, aren't really aware of this phenomenon.

Why do I say this? Because we still treat the Cray I as a supercomputer. Yet, the truth is that the Cray I, which is 15 years old, is no longer manufactured. In fact, a Cray I is in the Smithsonian's Air and Space Museum. It is also on display at the Deutches Museum in Munich, Germany.

My point is, not knowing what the technology trends are, the interagency body uses a reference point such as the Cray I, and moves up the performance scale somewhat to set a new supercomputer line. In this case, the Cray I's performance level of 160 megaflops was moved up to 300 megaflops. It took over 18 months to reach agreement on that level.

But is that a realistic level? This much I have learned: The U.S. semiconductor industry, fighting for its survival against stiff foreign competition, is making faster, denser chips. The Intel i860 chip, for example, can operate at 66 megaflops. Some time this year, it will be at 100 megaflops. That means that a laptop computer with two or three of these chips would be deemed a supercomputer since it is faster than a Cray I.

Regulatorily, what should we do? Deny or slow down the export of U.S. chips to Free World destinations? The U.S. semiconductor industry is export-dependent. If it cannot export, it will be overtaken by its foreign competitors, with whom it is competing neck-to-neck. Should we stop or slow down the export of personal computers and workstations because they will exceed the 300 megaflop level? We are talking about commercial Free World trade. Again, we face a computer industry that is export-dependent. If they cannot export they, too, would fold. Worst, we would have gained nothing for losing this vital industry, because our foreign competitors are making machines just as fast as ours, and they face few or no constraints shipping to non-Communist destinations.

This supercomputer definitional exercise is not a decontrol exercise. It is to impose an extraordinary control regime on top of the existing controls. But I explained the process of our search for a supercomputer control level because it is similar to what the interagency process goes through in achieving consensus on U.S. proposals for COCOM.

The Department of State witness will be addressing in full detail the specific proposals and ongoing efforts at COCOM. Rather than going into that amount of specificity with you, I would prefer to share some broad thoughts on where we are and where we should be going with COCOM.

First, there is no doubt that our allies are demanding that we recognize the technological revolution that has been sweeping worldwide. They view that unless serious streamlining occurs, they will be unable to defend the credibility of the control list to their legislatures and their domestic companies. Bear in mind, some of the entries on the control list had not been streamlined since 1974, while technological advances have been dramatic.

Second, Western Europe is anxiously poised to assist Eastern Europe and the Soviet Union achieve greater economic stability in order to further their democratic reforms. They are on the same continent. They are traditional trading partners and share a history going back centuries. The case of East and West Germany is even more compelling. These two countries will unify. For export control purposes, how should they be treated?

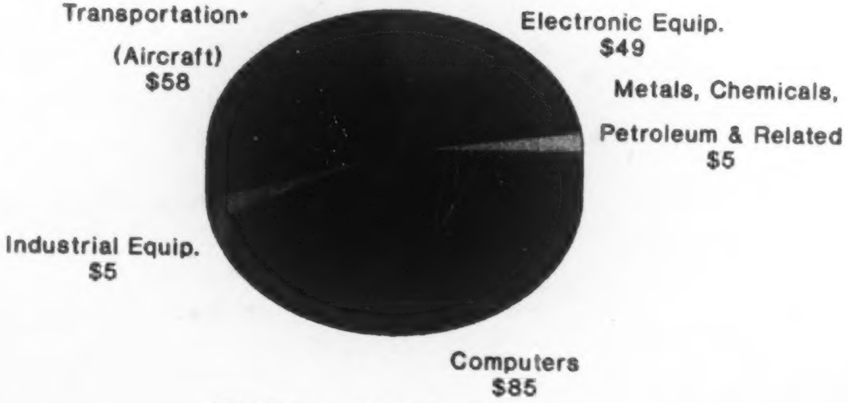
Third, with the dramatic changes occurring in Eastern Europe and the Soviet Union, our COCOM Allies view the strategic threat from that part of the world in a more optimistic way. Indeed, both Defense Secretary Cheney and CIA Director Webster have also aired their views on the Soviet strategic threat last week.

Fourth, the viability of COCOM is more important to our security interests now than ever. As the realignment of power in the East occurs, and nations there seek to build peaceful, commercial industries, it is critical that each COCOM country carefully review its commercial technology transfers to the East. To do this, COCOM must continue to exist in the 1990s. Therefore, it is in the U.S. interest to preserve COCOM. And we must recognize that to preserve COCOM, we need to recognize the widespread technological advances that are reflected in commonly available items of trade. Then we can all devote our resources to controlling truly strategic items.

The export control challenge of the 1990s is how best to effectively manage the converging political and technological revolutions that are occurring. The key to this challenge will be forged only when we reach consensus on the meaning of the term "strategic."

Applications by Commodity Groups

FY 89
(Billions of Dollars)



TOTAL $202 Billion

•Includes $30 Billion Extraordinary Transaction

BXA 1/90

Improved Service Delivery

Automated Telephone Answering Service

- Western Office -- 75,000 calls per year
- Washington -- 125,000 calls per year
- STELA -- 325,000 calls per year
  Total Calls: 525,000 per year

Seminars

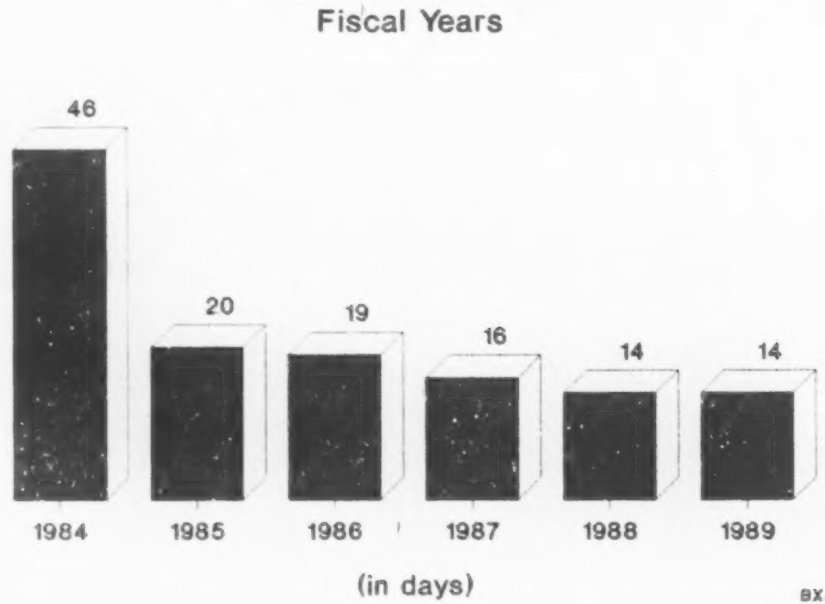
- Domestic -- 24 Each Year
- International -- 8 Countries Each Year

Professional Consulting Service

- Existing Offices -- California and Washington
- Future Offices -- Boston, Portland, and Northern California

BXA 1/90

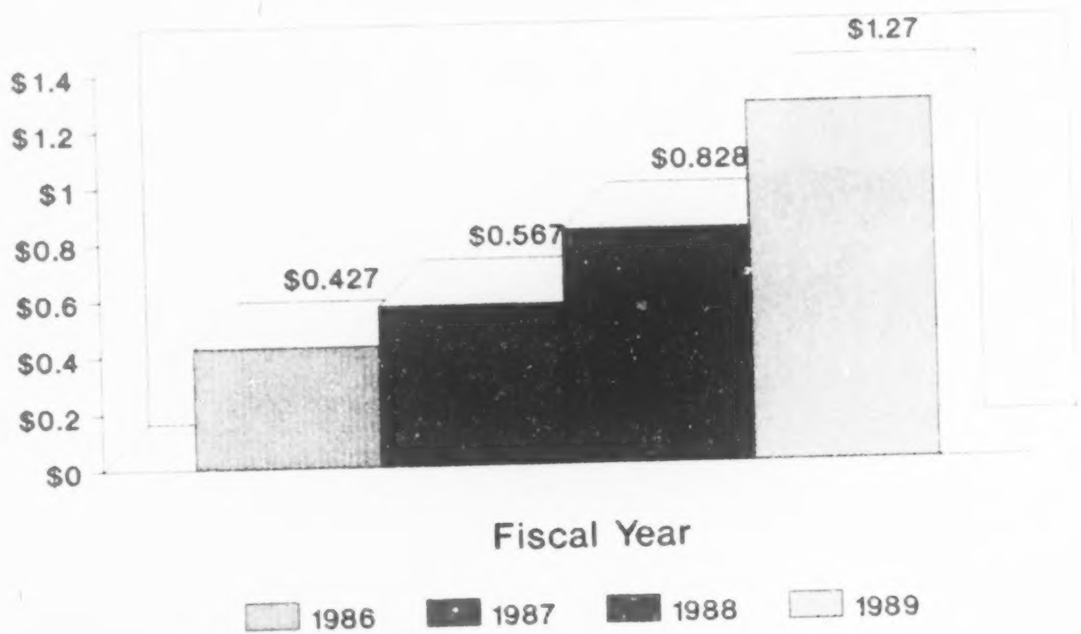
Case Processing Times for Free World



BXA 1/90

Estimated* Saving to Exporters

(In Billions)



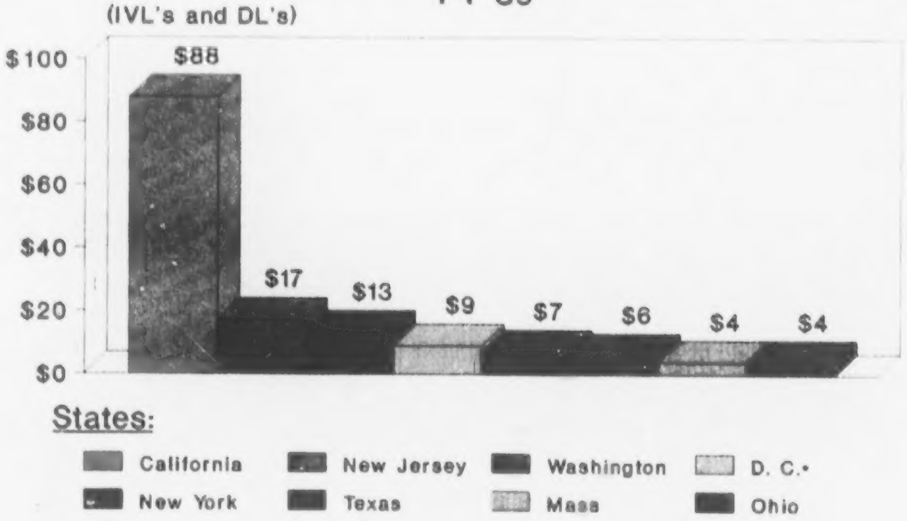
* Based on Reduced Cost of Capital, Warehousing, and Shipping Costs Through Timely License Approval.

BXA 1/90

Exports by State

(In Billions)

FY 89



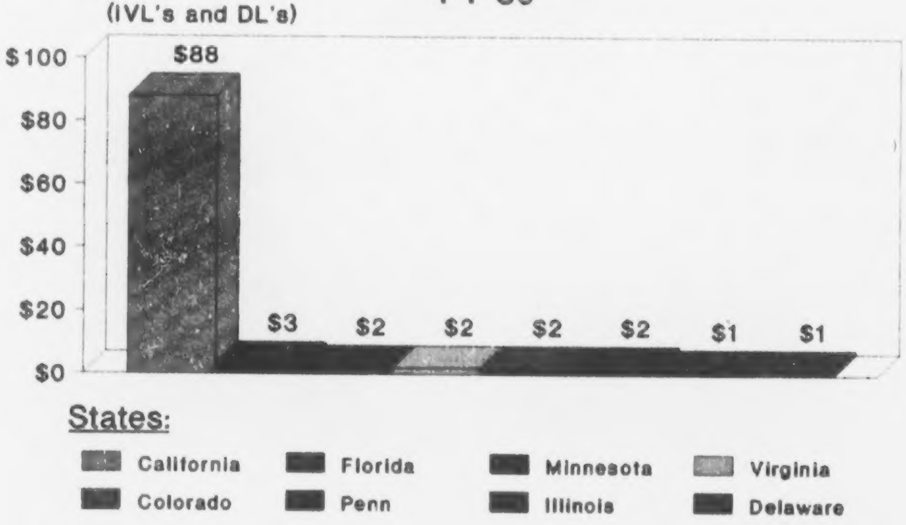
* Agents for Exporters are Concentrated in Washington DC Accounting for Large Value.

BXA 1/90

Exports by State

(In Billions)

FY 89



BXA 1/90

Cases Processed

FY -- 1989

	Number	Dollar Value
Freeworld	43,827	$125.7
COCOM	29,987	68.7
China (PRC)	6,129	3.6
Bloc	5,430	4.2
TOTAL	85,531	$202.2 Billion

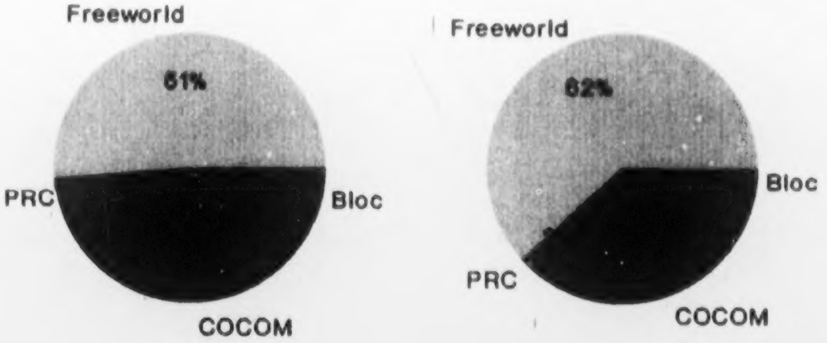
Total $ Value Includes $131 Billion in IVL's and $71 Billion in DL's

BXA 1/90

Cases Processed FY 1989

Distribution by Country Group

Number of Cases $ Value (in Billions)



Total: 85,531 Total: $202.2 Billion

Total $ Value Includes $131 Billion in IVL's & $71 Billion in DL's

BXA 1/90

U.S. Revising Guidelines On Computer Exports

By JOHN MARKOFF

Responding to intense industry criticism, the Commerce Department is reworking proposed Federal rules that would ease export restrictions on high-performance computers to Western allies, agency officials said. The new version, they said, would for the first time take account of foreign competition.

Industry executives have challenged the proposed changes, saying they do not go far enough in addressing the realities of the rapid increase in performance in the computer industry. At the center of the controversy is the sharp advance in computing power created by inexpensive microprocessor chips. Industry executives point out that even desktop systems based on these chips will soon match the performance of many of today's supercomputers.

The new rules as proposed in January would have replaced controls on supercomputer exports that now restrict the export of computers capable of speeds above 150 million floating-point operations per second, or Mflops. (A floating-point operation is a single mathematical operation like addition or subtraction.) The proposed changes would have created a three-tier structure of restrictions ranging from 100 to 300 Mflops.

The shift would have freed a number of makers of high-performance computers from stringent controls that the Government now imposes on foreign buyers. Such controls can include post-delivery inspections, control of software and in individual cases special government-to-government agreements.

Industry's Plan

The computer industry had countered the proposed regulations by offering an indexing plan that would take into account the rapid improvement in computer speed. But Commerce officials now say they believe an entirely new set of guidelines that take into account the fastest available machines made by foreign competitors is needed to permit United States companies to keep up. They said the proposed guidelines would be reworked in the next several weeks.

The officials also said that while attention had been focused on Japanese computer makers in the supercomputer and high-performance markets, Western European computer makers offered a more immediate threat to United States vendors.

"The real issue for these companies is Western Europe and there is a tremendous competitiveness there," said Dennis Kloske the Under Secretary of Commerce for export administration. "An industry can be amputated at the knees by an arbitrary ruling such as this from officials in Washington."

United States computer industry executives said they expect new competition from European computer makers. "We're expecting high-performance machines from both West Germany and France," said Terry L. Rock, senior vice president of the Convex Computer Corporation, a maker of mini-supercomputers based in Richardson, Tex. "Both of them want to compete in the supercomputer arena." Mr. Rock said Convex's most popular machines now range in speed between 100 and 200 Mflops. All of them would have been affected by the proposed export-control rules.

Commerce officials said they have learned that a number of computers are available from both Western European and Warsaw Pact computer makers that exceed the proposed limits. For example, Meiko Scientific Ltd. of Bristol, England, a maker of a parallel supercomputer using an advanced British microprocessor known as a Transputer, is already selling a computer capable of 300 Mflops. American supercomputer experts also testified at the hearings that they had seen a parallel supercomputer manufactured in Bulgaria that was capable of speeds of up to 100 Mflops.

The new version will take account of foreign competition.

One danger in enforcing strict performance standards on United States computer makers is that they will move offshore to produce their most powerful systems to escape export controls, Mr. Kloske said. He said Intel officials had suggested that they would manufacture a high-performance microprocessor called the i860 in Singapore and Malaysia.

But Intel officials said they had no plans to manufacture the chip overseas. The i860, which contains special hardware to speed scientific calculations, is capable of speeds up to 65 Mflops, and versions that exceed the 100-Mflop barrier will be available before the end of the year.

Mr. Kloske criticized American regulatory agencies for being out of touch with trends in the computer industry. "You have a situation where industry has gone one way and the regulatory regime has gone in the exact opposite direction," he said.

Senator SARBANES. Thank you very much, Secretary Kloske.

I see we have been joined by Senator Bond. Kit, do you want to make an opening statement?

Senator BOND. Thank you, Mr. Chairman.

Just very briefly, I think that while we all must recognize the United States no longer has a monopoly on high technology, U.S. firms cannot compete when constrained by rules that were designed with a monopoly in mind.

I hope that we will be able to take some significant steps to improve and update our export administration so that it's a vehicle to strengthen our national and economic security and not weaken it. That is our objective and I am delighted to have the opportunity to hear and read the testimony of the panel before us and participate in the questioning.

Thank you, Mr. Chairman.

Senator SARBANES. Very good. Ambassador Wendt.

STATEMENT OF ALLAN WENDT, SENIOR REPRESENTATIVE FOR STRATEGIC TECHNOLOGY POLICY, U.S. DEPARTMENT OF STATE

Mr. WENDT. Thank you, Mr. Chairman. I have a complete statement that I would like to submit for the record and with your permission I would provide now a summary of that statement.

Senator SARBANES. We will include the full statement in the record. I hope you will give enough of it so we have a sense of what the position of the Department is on this.

Mr. WENDT. Yes, sir.

Mr. Chairman, we are witnessing dramatic changes in the strategic environment that shapes our national security export control policy.

Let me say straight away that we believe the Export Administration Act is an essential tool for carrying out this policy and we favor a 1-year extension of the current act.

The Export Administration Act gives the administration the necessary flexibility to respond to recent positive and fast-moving developments in Eastern Europe and the Soviet Union while protecting vital security interests. I should add that our allies share our belief that CoCom will continue to play an important role in ensuring our collective security.

The underlying principles of our approach are the following. Support for reform in Eastern Europe, strengthened protection of truly strategic goods and technologies, more rapid modernization of the current control lists, and decontrol of off-the-shelf commodities.

Mr. Chairman, the President has ordered a comprehensive strategic review of our CoCom policy. The results of the review will form the basis for comprehensive proposals for the modernization of CoCom. This exercise is on a fast track. We will present the proposals prior to a meeting of senior officials of CoCom member governments scheduled for early June.

But we are not waiting for the outcome of that exercise before acting. We have put forward interim proposals at a special session of CoCom's executive committee last month. We proposed several immediate steps to adapt CoCom to the new strategic environment.

As a result of that meeting, the CoCom countries agreed to reduce case processing time by one-third, from 12 weeks to 8 weeks. They also set out an ambitious work plan to accelerate streamlining of the control lists and they agreed to give priority treatment to computers, telecommunications, and machine tools.

The CoCom countries will also consider whether there should be more favorable treatment for countries that adopt safeguards against diversion to unauthorized uses or users. Safeguards are not ironclad guarantees, but the administration believes, that together with the fundamental reforms that have taken place, safeguards would give us the margin of comfort and leverage to justify the export of higher levels of strategic technology to these countries.

The ultimate shape of our new CoCom policies will depend on further consultations with our allies and on the judgments we draw from the comprehensive strategic review which is now underway.

While we cannot prejudge the results of that review, it is certainly our expectation that it will provide a coherent strategic rationale to support significant reductions in current controls.

As we rightly focus on East-West trade matters, we should not forget that East-West trade accounts for only a small fraction of total licensed trade. To ease the overall licensing burden, the administration is working closely with our CoCom allies to establish virtually license-free trade among the CoCom member countries.

In keeping with that effort, we are also working to ensure that all CoCom members enforce the controls with equal vigor thereby ensuring fair competition for U.S. exporters.

Last year, the CoCom member countries agreed to the goal of implementing equally effective control systems in each CoCom country.

Mr. Chairman, I would now like to turn briefly to an issue related to export controls that has been of particular concern to this committee and to the business community—the munitions export licensing process.

Upon taking office, the new team at the Department of State took a careful look at this function and determined that the commercial defense trade function is a major responsibility as well as an essential instrument in the overall direction and control of American foreign policy.

In response, the Department of State has reorganized the Bureau of Political and Military Affairs, creating the Center for Defense Trade. In recognition of the high priority this function deserves, the department has allocated an additional $1.5 million to the Center and 23 new personnel are scheduled to report to work there this year.

One particular concern that has been raised by the industry is the commodity jurisdiction process. That is the process used to review the disposition of commodities on either the dual use list or the munitions list. New procedures have been designed to streamline the process.

We would like to see the commodity jurisdiction procedure used more frequently, thereby reducing the number of items subject to the strict munitions export regulations.

We, ourselves, are reviewing the contents of the munitions list in order to determine which items can either be eliminated or moved to the dual use list. The first phase of the review will be completed in July.

We are also considering a number of other administrative changes to the munitions licensing procedure in a further effort to reduce both our workload and the burden for exporters.

In sum, Mr. Chairman, I believe the record demonstrates that the administration has been far-sighted in anticipating the need for change in the area of national security export control policy. The changes in the strategic environment inspire us and at the same time they challenge us. We will continue to work with the Congress to advance the goals we share with our allies in this era of historic transformation.

Thank you.

[The complete prepared statement of Allan Wendt follows:]

PREPARED STATEMENT OF AMBASSADOR ALLAN WENDT
SENIOR REPRESENTATIVE FOR STRATEGIC TECHNOLOGY POLICY
U.S. DEPARTMENT OF STATE
BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY
U.S. SENATE
WASHINGTON, D.C.
MARCH 7, 1990

I APPRECIATE THIS OPPORTUNITY TO COME BEFORE YOU TO CONTINUE THE ADMINISTRATION'S DIALOGUE WITH THE CONGRESS ON THE EXPORT ADMINISTRATION ACT AND THE EVOLUTION OF NATIONAL SECURITY EXPORT CONTROL POLICY.

EXPORT ADMINISTRATION ACT

THE EXPORT ADMINISTRATION ACT (EAA) IS AN IMPORTANT TOOL FOR THE ADMINISTRATION IN CARRYING OUT OUR NATIONAL SECURITY POLICY. THE DEPARTMENT OF STATE LEADS THE NEGOTIATIONS CONCERNING MULTILATERAL COOPERATION ON EXPORT CONTROLS, WORKING CLOSELY WITH THE DEPARTMENTS OF COMMERCE, DEFENSE AND OTHER AGENCIES, AS APPROPRIATE. WE ARE VIGOROUSLY PURSUING INITIATIVES IN BOTH THE EAST-WEST AND WEST-WEST CONTEXTS. THESE EXPORT CONTROL INITIATIVES SHOULD BE CONSIDERED IN LIGHT OF OVERALL FOREIGN POLICY AND NATIONAL SECURITY OBJECTIVES. THE EAA IS A FLEXIBLE INSTRUMENT THAT ALLOWS US TO RESPOND POSITIVELY TO THE CHANGING INTERNATIONAL ENVIRONMENT WHILE MAINTAINING NECESSARY CONTROLS OVER TRULY CRITICAL STRATEGIC TECHNOLOGY. THE ADMINISTRATION FAVORS A ONE YEAR EXTENSION OF THE PRESENT ACT.

THE ADMINISTRATION HAS SOUGHT TO CARRY OUT FAITHFULLY THE PROVISIONS OF THE 1988 OMNIBUS TRADE AND COMPETITIVENESS ACT. WE HAVE, FOR EXAMPLE, WORKED WITH OUR COCOM PARTNERS TO DECONTROL 66 (OF 99) ITEMS COVERED BY SO-CALLED ADMINISTRATIVE EXCEPTIONS NOTES (ITEMS NOT REQUIRING PRIOR COCOM REVIEW, BUT SUBJECT TO A REPORTING REQUIREMENT). THE REMAINING 33 NOTES HAVE BEEN MAINTAINED ON THE BASIS OF COCOM'S ESTABLISHED STRATEGIC CRITERIA. DOMESTICALLY, OUR ACTIONS HAVE INCLUDED ELIMINATION OF 14 ENTIRE UNILATERAL CONTROLS UNDER SECTION 5 (NATIONAL SECURITY CONTROLS) OF THE EAA. THE ONLY CONTROLS THAT HAVE BEEN MAINTAINED, NOW AS FOREIGN POLICY CONTROLS, ARE THOSE RELATING TO CHEMICAL OR NUCLEAR WEAPONS. WE HAVE ALSO IMPLEMENTED THE NEW FOREIGN AVAILABILITY PROCEDURES THAT INCLUDE MUCH SHORTER DEADLINES FOR PROCESSING EXPORTERS' CLAIMS THAT FOREIGN AVAILABILITY EXISTS. FURTHERMORE, WE ARE MAKING ADMINISTRATIVE CHANGES TO IMPROVE COORDINATION AND DISPUTE RESOLUTION BETWEEN GOVERNMENT AGENCIES. THE NEW, MORE RESPONSIVE FOREIGN AVAILABILITY PROCESS HAS BEEN REFLECTED IN OUR PROPOSALS TO COCOM, WHERE WE HAVE BROUGHT ABOUT THE DECONTROL OF ABOUT A DOZEN TECHNOLOGIES SINCE 1988.

NATIONAL SECURITY EXPORT CONTROL POLICY

THE STRATEGIC ENVIRONMENT IS CHANGING AT A PACE UNIMAGINABLE ONLY A FEW MONTHS AGO: COMMUNISM CONTINUES TO COLLAPSE, FREE ELECTIONS ARE SCHEDULED IN EASTERN EUROPE, AND WE ARE MOVED BY THE ELOQUENT COMMENTARY ON DEMOCRACY OF THE CZECHOSLOVAKIAN PRESIDENT ON HIS RECENT VISIT TO THE UNITED STATES.

AS WE WELCOME THIS SPREAD OF FREEDOM AND DEMOCRACY, WE ALSO RECOGNIZE THE CHALLENGES AND RESPONSIBILITIES THAT THESE DRAMATIC CHANGES HAVE THRUST UPON US IN THIS PIVOTAL ERA. ALL NATIONS HAVE A STAKE IN THE OUTCOME. OUR POLICIES MUST SUPPORT REFORM AND CREATION OF A EUROPE WHOLE AND FREE. AT THE SAME TIME, WE MUST NOT THOUGHTLESSLY WEAKEN THE DOMESTIC AND MULTILATERAL INSTITUTIONS AND POLICIES THAT HAVE PROTECTED OUR SECURITY FOR OVER 40 YEARS.

THE ADMINISTRATION HAS TAKEN AN INITIATIVE TO ENSURE THAT OUR STRATEGIC EXPORT CONTROL POLICIES ADAPT TO THE POSITIVE AND FAST-MOVING DEVELOPMENTS IN EASTERN EUROPE AND THE SOVIET UNION.

WE ARE GUIDED BY SEVERAL KEY PRINCIPLES IN THIS PROCESS:

- SUPPORT FOR REFORM IN EASTERN EUROPE;
- STRENGTHENED PROTECTION OF TRULY STRATEGIC GOODS AND TECHNOLOGIES;
- MORE RAPID MODERNIZATION OF THE CURRENT CONTROL LISTS; AND
- DECONTROL OF OFF-THE-SHELF COMMODITIES READILY AVAILABLE TO THE GENERAL PUBLIC.

THE PRINCIPLES ARE STRAIGHTFORWARD; CONVERTING THEM INTO POLICY IS THE CHALLENGE. WE MUST ENSURE FAIR COMPETITION FOR U.S. BUSINESS IN THE INTERNATIONAL MARKET AND SUPPORT REFORM IN EASTERN EUROPE. WE MUST ALSO RECOGNIZE THAT LEGITIMATE NATIONAL SECURITY CONCERNS REQUIRE CONTINUANCE OF SOME EXPORT CONTROLS. WE SEE REMARKABLE POSITIVE POLITICAL AND ECONOMIC DEVELOPMENTS IN ALL OF THE WARSAW PACT COUNTRIES; BUT A SIGNIFICANT SOVIET STRATEGIC CAPABILITY REMAINS. PROTECTING WESTERN STRATEGIC TECHNOLOGY SERVES TO DETER THE USE OF THAT CAPABILITY. COCOM IS ESSENTIAL TO THIS EFFORT AND SHOULD BE SEEN AS INSURANCE -- AN IMPORTANT GUARANTOR OF OUR SECURITY. AT THE SAME TIME, THE STRATEGIC ENVIRONMENT IS CHANGING, AND COCOM MUST CHANGE WITH IT.

THE PRESIDENT HAS ORDERED A COMPREHENSIVE REVIEW OF THE CHANGING STRATEGIC PICTURE. THE RESULTS OF THIS REVIEW WILL FORM THE BASIS OF U.S. PROPOSALS FOR MODERNIZING COCOM. WHILE WE CANNOT PREJUDGE THE RESULTS, IT IS OUR EXPECTATION THAT THIS REVIEW WILL PROVIDE A COHERENT STRATEGIC RATIONALE TO SUPPORT SIGNIFICANT REDUCTIONS IN CURRENT CONTROLS.

IN THE MEANTIME, WE HAVE PUT FORWARD INTERIM PROPOSALS. THE SEVENTEEN COCOM MEMBER GOVERNMENTS, WITH WHOM WE COOPERATIVELY MAINTAIN NATIONAL SECURITY EXPORT CONTROLS, HELD A SPECIAL MEETING FEBRUARY 14-15 TO DISCUSS OUR PROPOSALS, AND THOSE OF OTHER ALLIES, ON HOW TO ADAPT THE COCOM CONTROLS TO THE CHANGING STRATEGIC ENVIRONMENT. OUR ALLIES SHARE THE ADMINISTRATION'S BELIEF THAT COCOM WILL CONTINUE TO PLAY AN IMPORTANT ROLE IN ENSURING OUR COLLECTIVE SECURITY. AT THE SAME TIME, WE ARE ALL COMMITTED TO MAKING SURE COCOM CONTROLS DO NOT STAND IN THE WAY OF LEGITIMATE CIVIL TRADE. WE KNOW THAT FAILURE TO ADAPT WILL UNDERMINE COCOM'S CREDIBILITY AND EFFECTIVENESS.

AT THE RECENT COCOM MEETING IN PARIS, THE U.S. INTERIM PROPOSALS CALLED FOR IMMEDIATE PROCEDURAL CHANGES FOR EASTERN EUROPE, SOME IMMEDIATE STREAMLINING FOR ALL DESTINATIONS, AND MORE LIBERALIZATION FOR EASTERN EUROPEAN COUNTRIES THAT ADOPT SAFEGUARDS AGAINST DIVERSION OF CONTROLLED TECHNOLOGY. WHILE OUR ALLIES WELCOMED THE THRUST OF OUR PROPOSALS, THEY FAVORED GREATER RELAXATION OF THE CONTROLS. MOST OF OUR ALLIES NOW FAVOR DECONTROL TO ALL DESTINATIONS UP TO THE THRESHOLD OF TECHNOLOGY THAT COCOM COUNTRIES CAN NOW EXPORT TO CHINA AT NATIONAL DISCRETION (THE CHINA GREEN LINE).

BY THE CLOSE OF THE MEETING, WE HAD AGREED TO CUT CASE-PROCESSING TIME FOR ALL DESTINATIONS BY ONE THIRD (FROM 12 TO EIGHT WEEKS) AND TO CONSIDER EXPORT CASES TO EASTERN EUROPE IN LIGHT OF THE POSITIVE DEVELOPMENTS THERE.

COCOM MEMBERS ALSO AGREED TO AN AMBITIOUS WORK PLAN TO ACCELERATE STREAMLINING OF THE CONTROL LISTS. BY THE END OF MAY, WORKING GROUPS ON THREE KEY SECTORS ESSENTIAL TO ECONOMIC DEVELOPMENT -- TELECOMMUNICATIONS, COMPUTERS AND MACHINE TOOLS -- ARE TO COMPLETE THEIR PROPOSALS FOR ADJUSTMENT OF THE CONTROLS. THE WORKING GROUPS HAVE BEEN INSTRUCTED TO USE THE CHINA GREEN LINE AS A REFERENCE POINT FOR DECONTROL OR MORE FAVORABLE TREATMENT. ADDITIONAL SECTORS FOR ACCELERATED STREAMLINING TREATMENT ARE TO BE PROPOSED BY JUNE.

THE COCOM PARTNERS FURTHER AGREED LAST MONTH TO CONSIDER WHETHER COUNTRIES THAT ADOPT SAFEGUARDS TO PREVENT DIVERSION OF STRATEGIC TECHNOLOGY TO UNAUTHORIZED USERS OR USES SHOULD RECEIVE MORE FAVORABLE TREATMENT. SEVERAL EASTERN EUROPEAN COUNTRIES HAVE APPROACHED THE U.S. OFFERING TO IMPLEMENT SAFEGUARDS REGIMES IN EXCHANGE FOR ENHANCED ACCESS TO CONTROLLED TECHNOLOGY. WE HAVE STARTED A DIALOGUE WITH THESE COUNTRIES ON THE ELEMENTS WE CONSIDER ESSENTIAL IN SUCH SYSTEMS AND HOW TO PUT THEM IN PLACE.

THE U.S. WILL LOOK MORE FAVORABLY UPON TRANSFER OF CONTROLLED TECHNOLOGY TO THOSE EASTERN EUROPEAN COUNTRIES ADOPTING SAFEGUARDS REGIMES THAT INCLUDE GOVERNMENT-BACKED END-USE ASSURANCES AND PROVIDE FOR ON-SITE INSPECTIONS UPON REQUEST.

SAFEGUARDS REGIMES ARE A USEFUL PART OF OUR OVERALL NATIONAL SECURITY EXPORT CONTROL POLICY. HOWEVER, THEY ARE NOT AN END IN THEMSELVES, NOR ARE THEY PANACEAS FOR ALL OUR TECHNOLOGY TRANSFER CONCERNS. A PRIME CONCERN REGARDING EASTERN EUROPE IS THE QUESTION OF COOPERATION BETWEEN SOME INTELLIGENCE SERVICES OF THE WARSAW PACT.

OUR WORK TO DATE REPRESENTS IMPORTANT FIRST STEPS IN THE CONTINUAL PROCESS OF ADAPTING U.S. EXPORT CONTROL POLICY TO THE CHANGES TAKING PLACE IN EASTERN EUROPE AND THE USSR. SENIOR OFFICIALS OF COCOM MEMBER GOVERNMENTS WILL MEET AGAIN IN EARLY JUNE TO DISCUSS ADDITIONAL PROPOSALS.

THE DETAILS OF OUR OWN COMPREHENSIVE PROPOSALS MUST NECESSARILY AWAIT THE OUTCOME OF THE STRATEGIC REVIEW. IN THE MEANTIME, WE ARE NOT STANDING STILL. IN ADDITION TO OUR WORK ON COMPUTERS, TELECOMMUNICATIONS, AND MACHINE TOOLS, THE CONTINUOUS PROCESS OF REVIEWING THE CONTROL LISTS IS PROCEEDING IN COCOM.

COCOM'S ROLE IN EAST-WEST TRADE IS DESERVEDLY RECEIVING INCREASED ATTENTION. WE SHOULD BEAR IN MIND, HOWEVER, THAT ONLY ABOUT 10 PERCENT OF LICENSED EXPORTS TO THE PROSCRIBED COUNTRIES REQUIRE COCOM APPROVAL. FURTHERMORE, WE SHOULD REMEMBER THAT WEST-WEST TRADE ACCOUNTS FOR THE VAST MAJORITY OF U.S. INTERNATIONAL TRADE. ONLY 6 PERCENT OF U.S. LICENSED EXPORTS (BY VALUE) WENT TO THE SOVIET UNION AND ITS ALLIES DURING FISCAL YEAR 1989.

OUR GOAL IS TO CREATE VIRTUALLY LICENSE-FREE TRADE AMONG COCOM MEMBERS IN THE NEAR-TERM. ONLY A FEW VERY SENSITIVE ITEMS WILL CONTINUE TO REQUIRE AN INDIVIDUALLY VALIDATED LICENSE.

IN PARALLEL WITH ENCOURAGING LICENSE-FREE AMONGST COCOM MEMBERS, THE U.S. HAS BEEN WORKING CLOSELY WITH ITS COCOM PARTNERS TO IMPROVE ENFORCEMENT OF COCOM CONTROLS. IN 1988, A COCOM WORKING GROUP WAS FORMED TO DEVELOP A "COMMON STANDARD LEVEL OF EFFECTIVE PROTECTION" OF CONTROLLED GOODS AND

TECHNOLOGIES AGAINST DIVERSION TO UNAUTHORIZED DESTINATIONS OR USES. SUCH A STANDARD DOES NOT MEAN THAT ALL COUNTRIES WILL HAVE IDENTICAL CONTROL SYSTEMS, BUT RATHER THAT EACH COUNTRY'S CONTROL SYSTEM WILL YIELD "EQUALLY EFFECTIVE" PROTECTION.

THE WORKING GROUP HAS IDENTIFIED THE REGULATORY AND ENFORCEMENT MEASURES NECESSARY TO ENSURE EQUALLY EFFECTIVE PROTECTION. AT A COCOM HIGH LEVEL MEETING IN OCTOBER 1989, MEMBERS AGREED TO THE OBJECTIVE OF IMPLEMENTING THE COMMON STANDARD BY DECEMBER 1991. WE HAVE ALREADY COME A LONG WAY TOWARD THIS OBJECTIVE; ITS FULL REALIZATION COULD WELL ENABLE US TO REMOVE CONTROLS FOR TRADE AMONG COCOM COUNTRIES ON EVEN THE MOST SENSITIVE ITEMS. IT SHOULD ALSO HELP ENSURE FAIRNESS IN APPLICATION OF THE CONTROLS.

MUNITIONS LICENSING

I WOULD NOW LIKE TO DISCUSS MUNITIONS LICENSING. FIRST, I WOULD LIKE TO TELL THE COMMITTEE ABOUT THE NEW CENTER FOR DEFENSE TRADE, WHICH HAS DIRECT OVERSIGHT OF THE UNITED STATES MUNITIONS LIST. SECOND, I WILL ADDRESS THE ISSUE OF COMMODITY JURISDICTION. THIRD, I WILL TURN TO THE QUESTION OF OVERLAP BETWEEN THE ITEMS CONTROLLED ON THE DUAL USE COMMODITY CONTROL LIST AND THOSE CONTROLLED ON THE US MUNITIONS LIST.

DEFENSE TRADE CENTER

THE COMMERCIAL DEFENSE TRADE FUNCTION IS AN IMPORTANT RESPONSIBILITY OF THE DEPARTMENT OF STATE AS WELL AS AN ESSENTIAL INSTRUMENT IN THE OVERALL DIRECTION AND CONTROL OF AMERICAN FOREIGN POLICY. WHAT MILITARY ITEMS MAY BE SOLD TO WHICH COUNTRIES AND COMPANIES AT SPECIFIC TIMES, GIVEN EVER-CHANGING INTERNATIONAL CONDITIONS, ARE SIGNIFICANT FOREIGN POLICY DECISIONS. FOR EXAMPLE, WE WERE ABLE TO REACT SWIFTLY TO CHANGING SITUATIONS IN CHINA AND SOUTH AFRICA AND THE IRAN-IRAQ WAR BY RESTRICTING OR EMBARGOING MUNITIONS EXPORTS.

IN 1989, THE DEPARTMENT OF STATE CONCLUDED THAT COMPLAINTS ABOUT THE UNDERSTAFFING AND UNDERFUNDING OF THE PRIMARY OFFICE HANDLING THIS FUNCTION, THE OFFICE OF MUNITIONS CONTROL, WERE WELL FOUNDED. FURTHERMORE, IT WAS EVIDENT THAT -- GIVEN THE COMPETITIVENESS OF THE GLOBAL ARMS MARKET AND GLOBAL POLITICAL CHANGES -- WE NEEDED TO BE MORE ACTIVE ON POLICY ISSUES RELATED TO DEFENSE TRADE. WHAT WAS NEEDED WAS A SIGNIFICANT INJECTION OF NEW RESOURCES FOR THE DEFENSE TRADE FUNCTION AND A REORGANIZED STRUCTURE.

BASED ON THESE CONCERNS, THE CENTER FOR DEFENSE TRADE WAS ESTABLISHED ON JANUARY 8, 1990. THE CENTER CONSISTS OF TWO OFFICES: THE OFFICE OF DEFENSE TRADE CONTROLS AND THE OFFICE OF DEFENSE TRADE POLICY. TOGETHER, THEY WORK TO PROVIDE IMPROVED POLICY GUIDELINES AND EXPORT LICENSING SERVICES TO U.S. DEFENSE INDUSTRIES WHILE STREAMLINING THE DEPARTMENT'S FOREIGN POLICY AND REGULATORY CONTROL OF DEFENSE TRADE.

THE DEFENSE TRADE POLICY OFFICE IS INVOLVED IN SUCH ISSUES AS FOREIGN CO-DEVELOPMENT AND CO-PRODUCTION MEMORANDA OF UNDERSTANDING, REVISION OF THE INTERNATIONAL MUNITIONS LIST, FOREIGN ACQUISITION OF U.S. FIRMS, AND SPACE AND SATELLITE EXPORT POLICY GUIDELINES. THE DEFENSE TRADE CENTER HANDLES THE ACTUAL REGULATION AND LICENSING OF DEFENSE TRADE.

THIS REORGANIZATION REPRESENTS MORE THAN A NAME CHANGE. OUR OBJECTIVE IS TO MINIMIZE THE RESPONSE TIME FOR LICENSE APPLICATIONS AND COMMODITY JURISDICTION INQUIRIES WHILE MAINTAINING ROBUST ATTENTION TO COMPLIANCE. THIS OBJECTIVE CAN AND WILL BE ACHIEVED THROUGH A TWO-PRONGED APPROACH: APPLYING MORE RESOURCES TO MUNITIONS LICENSING MATTERS AND REDUCING THE WORKLOAD THROUGH BOTH IMPROVED ADMINISTRATIVE PROCEDURES AND STREAMLINING THE U.S. MUNITIONS LIST.

ON THE RESOURCE SIDE OF THE EQUATION, 1990 FUNDING HAS BEEN INCREASED DRAMATICALLY, ALLOWING US TO FUND, AMONG OTHER ITEMS, ADP IMPROVEMENTS, CONTRACTORS, AND OVERTIME. THE CENTER WILL HAVE 23 NEW PERSONNEL (OVER ITS EXISTING BASE OF 35) AND AN ADDITIONAL $1.5 MILLION THIS YEAR. WE HAVE ALSO ADDED THIRTEEN OFFICERS ON A TEMPORARY BASIS TO ELIMINATE THE BACKLOG OF LICENSE APPLICATIONS. THE DEFENSE TRADE CENTER HAS ISSUED 11,000 LICENSES SINCE IT OPENED IN JANUARY -- 60 PERCENT ABOVE ITS NORMAL OUTPUT IN 1989.

COMMODITY JURISDICTION

FROM TIME TO TIME, QUESTIONS ARISE REGARDING WHETHER AN ITEM IS CONTROLLED ON THE COMMODITY CONTROL LIST OR THE U.S. MUNITIONS LIST. THE PROCEDURE USED TO DETERMINE THIS IS KNOWN AS THE COMMODITY JURISDICTION PROCEDURE. THE COMMODITY UNDER QUESTION MAY BE A BRAND NEW COMMODITY OR IT MAY BE AN OLD ITEM THAT HAS BEEN COVERED BY THE U.S. MUNITIONS LIST SINCE THE ITEM WAS FIRST MARKETED. BUT THERE MAY NOW BE A QUESTION AS TO WHETHER IT STILL NEEDS TO BE COVERED AS A MUNITIONS ITEM. THE COMMODITY JURISDICTION PROCEDURE IS THE MEANS FOR REMOVING COMMODITIES FROM THE U.S. MUNITIONS LIST.

THE U.S. MUNITIONS LIST IS A GENERIC LIST OF COMMODITIES, ARRANGED BY CATEGORY, THAT WERE ORIGINALLY DESIGNED OR MODIFIED FOR MILITARY APPLICATIONS. THE MILITARY SIGNIFICANCE OF AN ITEM MAY DIMINISH OVER TIME. FOR EXAMPLE, TEFLON AND THE JEEP WERE BOTH COVERED BY THE LIST WHEN THEY WERE FIRST MARKETED. OVER TIME, QUESTIONS ARISE AS TO WHETHER ITEMS ON THE U.S. MUNITIONS LIST NEED TO BE CONTROLLED UNDER THIS STRICT EXPORT CONTROL REGIME. A REQUEST FOR A COMMODITY JURISDICTION DETERMINATION IS THUS MADE. THE CRITICAL QUESTION IS THEN WHETHER THE ITEM UNDER CONSIDERATION IS, AT THAT POINT, INHERENTLY MILITARY IN CHARACTER. IN OTHER WORDS, DOES THE ITEM STILL POSSESS AN INHERENT MILITARY SIGNIFICANCE THAT REQUIRES THE STRICT EXPORT REGULATION UNDER THE U.S. MUNITIONS LIST?

TEFLON AND THE JEEP, AFTER THEIR INHERENT MILITARY APPLICABILITIES WERE DEEMED TO BE NO LONGER SIGNIFICANT, WERE REMOVED FROM MUNITIONS LIST COVERAGE THROUGH THE COMMODITY JURISDICTION PROCESS. NOTE THAT THEY WERE REMOVED FROM THE MUNITIONS LIST BASED ENTIRELY UPON A DECISION REGARDING THEIR MILITARY SIGNIFICANCE -- NOT UPON WHETHER THEY HAD COME TO BE USED PREDOMINANTLY IN NON-MILITARY APPLICATIONS.

EXISTING COMMODITY JURISDICTION PROCEDURES REQUIRE THAT THE DEPARTMENT OF STATE CONVENE AN INTERAGENCY (STATE, COMMERCE, AND DEFENSE) REVIEW OF THE COMMODITY TO REACH A FINAL DETERMINATION. IN THE EVENT A DISAGREEMENT ARISES BETWEEN THE AGENCIES, THE ISSUE IS CONSIDERED AT INCREASINGLY HIGHER LEVELS OF MANAGEMENT. IN SOME CASES, THE PRESIDENT MAY BE CALLED UPON TO MAKE A FINAL DECISION.

OUR AIM IS TO MAKE BETTER AND MORE FREQUENT USE OF THE COMMODITY JURISDICTION PROCESS. THERE HAVE BEEN PROBLEMS WITH EXCESSIVE DELAYS IN THE PAST. THESE ARE NOW BEING ELIMINATED. THE MORE COMMODITY JURISDICTION DECISIONS WE MAKE, THE MORE ITEMS WE CAN REMOVE FROM THE U.S. MUNITIONS LIST, THUS REDUCING OUR WORKLOAD. MORE IMPORTANTLY, THE MORE COMMODITY JURISDICTION DECISIONS INDUSTRY OR OTHERS REQUEST, THE MORE ITEMS WILL BE REMOVED, LEAVING FEWER ITEMS THAT WILL NEED TO BE SUBJECT TO THE STRICT U.S. MUNITIONS EXPORT REGULATIONS.

U.S. MUNITIONS LIST - COMMODITY CONTROL LIST OVERLAP

WE ARE REVIEWING THE CONTENTS OF OUR MUNITIONS LIST AND WE PLAN TO COMPLETE THE INITIAL PHASE OF THIS PROJECT BY JULY 1. A RULE OF REASON MUST APPLY TO OUR DECISIONS REGARDING THE CONTENTS OF THE MUNITIONS LIST. OUR NATIONAL SECURITY INTERESTS ARE BEST SERVED BY A CAREFUL REVIEW. WE LOOK FORWARD TO CONSULTING WITH INDUSTRY AS WE PROCEED ON THIS PROJECT.

IN ADDITION, WE ARE CONSIDERING A NUMBER OF ADMINISTRATIVE MEASURES THAT WILL MAKE THE LICENSING PROCESS LESS BURDENSOME. THESE PROPOSED CHANGES ARE THE RESULT OF CONVERSATIONS WITH INDUSTRY AND A CREATIVE LOOK AT OUR INTERNAL PROCEDURES. THE DRAFT PROPOSALS RANGE FROM THE ELIMINATION OF TEMPORARY EXPORT LICENSES FOR STATIC DEMONSTRATION PURPOSES (I.E., AIR SHOWS) TO THE DEVELOPMENT OF A NEW DISTRIBUTION LICENSE FOR EXPORTERS.

IN TODAY'S COMPETITIVE INTERNATIONAL ENVIRONMENT, WE RECOGNIZE THAT IT IS IN THE NATIONAL INTEREST FOR AMERICAN BUSINESS TO BE ABLE TO OPERATE AS FREELY AS POSSIBLE, UNFETTERED BY ALL BUT THE MOST CAREFULLY CONSIDERED GOVERNMENT REGULATIONS. THE STRICT EXPORT CONTROLS OF THE U.S. MUNITIONS LIST ARE STILL REQUIRED FOR FOREIGN POLICY AND NATIONAL SECURITY REASONS, BUT WE MUST NOT IMPOSE THEM ON ANY MORE COMMODITIES THAN WE CONSIDER NECESSARY. FOR THOSE COMMODITIES THAT MUST REMAIN SUBJECT TO MUNITIONS LIST EXPORT CONTROLS, THE DEPARTMENT OF STATE'S LICENSING PROCESS IS NOW MORE EFFICIENT AND RESPONSIVE THAN IN THE RECENT PAST.

LET ME CONCLUDE BY SAYING THAT I BELIEVE THE RECORD DEMONSTRATES THAT THE ADMINISTRATION HAS BEEN FAR SIGHTED IN ANTICIPATING THE NEED FOR CHANGE IN THE AREA OF NATIONAL SECURITY EXPORT CONTROL POLICY. WE MUST FIND THE RIGHT BALANCE IN ADAPTING THE CONTROLS WHILE DETERRING DIVERSIONS. THE CHANGES IN THE STRATEGIC ENVIRONMENT IN EASTERN EUROPE INSPIRE US AND AT THE SAME TIME CHALLENGE US. WE WILL CONTINUE TO WORK WITH THE CONGRESS TO ADVANCE THE GOALS WE SHARE WITH OUR ALLIES IN THIS ERA OF HISTORIC TRANSFORMATION.

Senator SARBANES. Thank you, Ambassador Wendt.
Secretary Hadley.

STATEMENT OF STEPHEN J. HADLEY, ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY POLICY

Mr. HADLEY. Mr. Chairman, I have a written statement. In order to save the time of the committee I would propose to submit it for the record and simply try and set out here eight principles that the Department is trying to use to guide its participation in the process outlined by the other witnesses.

Mr. HADLEY. We recognize the startling and dramatic changes going on in Eastern Europe. There's no dispute about that. And we agree that it is in our strategic interest to support that change and encourage political democracy and economic pluralism in Eastern Europe.

We concede that relaxation of technology controls can play a role in this process. We note there's a tension here. There's a need for balance. At the end of the day, there are still going to be goods and technologies that we will have to protect. Even after unilateral reductions and a CFE agreement, the Soviet Union will continue to be a major military power. It is with its strategic nuclear weapons after all the one nation on Earth with the capability of threatening the very survival of this country. And indeed, our principal concern in relaxing CoCom controls on goods and technologies for Eastern Europe is the risk that those goods and technologies will find their way to the Soviet Union.

For this reason, we believe the EAA remains an essential underpinning of our efforts to respond positively to the change in Eastern Europe while ensuring that strategic technology is safeguarded.

DOD supported the proposals that were submitted by the U.S. Government for relaxation of CoCom restrictions in the areas of computers, telecommunications and machine tools. These proposals represented major departures from positions taken by the DOD in the past. We are prepared to consider further relaxation in these and other areas, but we need to be clear about exactly where we are headed. That is why, with JCS in the lead, we are undertaking to identify those bottom line goods and technologies that still need to be protected notwithstanding the changed situation in Eastern Europe.

Our goal is to identify and protect only what needs to be protected and can be effectively protected.

My last point, Mr. Chairman, is that we recognize the need to reach agreement with our CoCom partners in this approach. A more restrictive U.S. approach than that of our CoCom partners only disadvantages U.S. companies without advancing the overall goal of technology security. This is not only unfair to U.S. companies but leads to an erosion of the U.S. technology base in these key technology areas. This is something which itself raises serious national security concerns.

Thank you, Mr. Chairman.

[The complete prepared statement of Stephen J. Hadley follows:]

TESTIMONY OF STEPHEN J. HADLEY
ASSISTANT SECRETARY OF DEFENSE FOR
INTERNATIONAL SECURITY POLICY
before the
Subcommittee on International Finance and Monetary Policy
Senate Banking Committee
Washington, D.C.
Wednesday, March 7, 1990

Mr. Chairman, Members of the Subcommittee, I appreciate this opportunity to appear before you today to testify on the reauthorization of the Export Administration Act (EAA).

The EAA remains an essential underpinning of U.S. efforts to respond positively to a changing international environment while enabling us to ensure that strategic technology is safeguarded. The Department of Defense has cooperated fully in implementing all regulatory changes to date, including those stemming from the 1988 Trade Act.

All of us recognize that there are important and dramatic political changes underway in Eastern Europe and the Soviet Union. All of us are prepared to encourage these changes which we hope will lead to democratic processes in countries that have never known democracy or have not seen its face for far too long. However, in this heady atmosphere of sudden and unexpected political change, we must not lose sight of some basic facts.

As Secretary Cheney has pointed out, while the threat from the East Bloc has diminished, the Soviet Union still possesses enormous military power and--through its strategic nuclear weapons--is the one nation on earth with the capability to threaten the survival of our nation. The modernization of Soviet military forces continues, particularly in the area of strategic nuclear forces, and there is evidence that the Soviet campaign of technology acquisition from the West to support this modernization has actually increased, with East European nations playing a vital role.

That is not to say, however, that things have not changed. They have. That is why the Department of Defense has supported the proposals that the United States Government has submitted to COCOM for loosening of export restrictions in three critical areas--computers, telecommunications, and machine tools. That is why the Department of Defense fully supports the ongoing effort to assess the impact of the political changes in the East Bloc and to determine what further changes to controls on the export of high technology can be made. This assessment includes a careful evaluation of the impact of ongoing political changes on the military requirement for export controls and on the military and intelligence cooperation between the members of the Warsaw Pact.

The United States Government and our COCOM allies want to see a system of multilateral controls that will enable release of technology that would improve the civil infrastructures of East European economies. However, we believe that it is essential to balance the needs of East Bloc economies with our national security interests before making specific proposals to release higher levels of technology.

Two studies are presently underway: one being undertaken by the Joint Chiefs of Staff to assess the potential impact of increased technology transfers on Warsaw Pact militarily critical mission areas, and the other by the intelligence community to evaluate illegal acquisition of Western technology by East European countries. We will know the results of these evaluations in about four weeks. With these studies in hand, we can then determine what further changes in restrictions on high technology exports to Eastern Europe are appropriate in terms of assisting development of East European economies and balancing that development with our need to protect U.S. national security interests.

In our reassessment of export controls regarding the East Bloc, we believe that, generally speaking, we should differentiate between the East European countries and the Soviet Union. The reason for this is quite simply that East European countries, whether individually or as a group, pose much less of a strategic threat to our national security than the Soviet Union. I must mention here that some of our COCOM partners do not necessarily agree with us on this point.

The United States and other COCOM members have received proposals from certain East European countries concerning their proposed efforts to protect against diversion of Western high technology exports. These were presented to our COCOM allies and are currently being discussed in Paris. Whatever changes to export controls to the East Bloc that may come out of these discussions will represent a consensus of our COCOM partners and will assure U.S. exporters of a level playing field vis-a-vis their competitors.

There are many "if's" to be considered in our reassessment of national security export controls to Eastern Europe and the Soviet Union. If the present trend of democratization continues in Eastern Europe and if certain measures are taken to ensure that sophisticated technology is not going to be passed on to the Soviet Union, then exports to Eastern Europe of higher levels of technology can be considered and undertaken. This latter point is important. Until it is clear that perestroika and glasnost will succeed in the Soviet Union and change becomes irreversible, we will need to be concerned about the diversion of technology to the Soviet Union. For as Secretary Cheney has said, "We still have to deal with the reality of the Soviet military capability and the fact that it may be wielded at some point in the future."

I would be happy to answer any further questions.

Senator Sarbanes. Thank you, Secretary Hadley.

I think what we'll do is take a 5-minute round since we have four members here, and then we will come back for a second round if members wish to pursue it. I don't know what members' schedules are but that will free them up if it's necessary.

I just want to put a few questions to start off with. First of all, am I correct that there would be no licensing requirements whatever if the administration decided there shouldn't be under the law? Is that correct?

Mr. Wendt. Yes, I believe it is, Mr. Chairman.

Senator Sarbanes. So the Congress has not imposed upon the administration restraints. It's simply given you the authority to put them in place if you judge it to be necessary for the national security interests or for other reasons. Is that correct?

Mr. Wendt. Yes, sir.

Senator Sarbanes. Secretary Kloske, when you say in your statement—this is at the end—"the key to this challenge will be forged only when we reach consensus on the meaning of the term "strategic," and when you say earlier, "bear in mind some of the entries on the control list have not been streamlined since 1974 while technological advances have been dramatic," who is the "we"?

Mr. Kloske. Well, Mr. Chairman, as you are fully aware, there is a consultative and cooperative interagency process which determines how we end up by the end of the day. Being new in this job, I am concerned that those lists are in the risk of being technologically outmoded because of the rapid changes that have taken place. For example, let's look at the machine tools. There's been basically a revolution in machine tool capability in the last 5 years.

Senator Sarbanes. I understand the problem. I just want to try to pinpoint where the locus of resolving it is. You have an interesting page in your statement about this Cray I supercomputer. You gave the testimony. I'm sitting here thinking, this is an incredible state of affairs. How did this ever happen? Did we in the Congress impose some sort of regime on the administration that brought about this that we need to correct? Then I sort of thought about it and I thought, well, that's clearly not the case because the regime we've provided is really just an authorizing regime. So where's the problem? It's all downtown, isn't it?

Mr. Kloske. The way I would describe the interagency process as it exists today is that it's driven by consensus to the lowest common denominator.

Senator Sarbanes. Within the executive branch?

Mr. Kloske. Yes, sir.

Senator Sarbanes. All of these problems that you talk about could be straightened out within the executive branch, could they not?

Mr. Kloske. I think if there was greater clarity on the issue of accountability, most probably.

Senator Sarbanes. If you were the sole decision maker, do you think you could straighten them out?

Mr. Kloske. If I were the sole decision maker, I could straighten it out.

Senator Sarbanes. Mr. Hadley, you said in your statement on page 4, "Some of our CoCom partners do not necessarily agree with us on this point," the point being as I understand it that the Eastern European countries pose less of a strategic threat to our national security than the Soviet Union. Is that correct? Which of our CoCom partners think that the Eastern European countries do not pose less of a strategic threat than the Soviet Union?

Mr. Hadley. Mr. Chairman, I think you have pointed out something that is not clearly expressed in that statement. Let me take the opportunity to clarify it here.

I think they would agree that the Eastern Europeans represent less of a threat than the Soviet Union. The issue is what you conclude from that.

We have concluded—and I think there's consensus in the executive branch—that that leads you to what has been called differentiation, that you might want to be more forthcoming in the relaxation of controls with respect to Eastern Europe than the Soviet Union. That is the point on which some of our allies disagree.

There are those who feel that there should be relaxation that both Eastern Europe and the Soviet Union on the same basis. As Ambassador Wendt indicated, what we have done is to try and craft some across-the-board decontrol in particularly these three areas of telecommunications, computers and machine tools that would affect both Eastern Europe and the Soviet Union. But in addition, to have additional relaxation of controls that would be available to the Eastern European countries upon adopting of acceptable export regimes, hopefully freely elected governments, and also cessation of this intelligence cooperation with the Soviet Union. We feel that makes them much less of a threat than the Soviet Union and justifies additional areas of relaxation.

Senator Sarbanes. These studies that are underway, you say the results of those will be in in 4 weeks' time; is that correct?

Mr. Hadley. Yes, Mr. Chairman.

Senator Sarbanes. Both the JCS study and the one undertaken by the intelligence community?

Mr. Hadley. Yes. The document issued by the NSC had a March 31 date on those two studies.

Senator Sarbanes. Senator Heinz.

Senator Heinz. Thank you, Mr. Chairman.

Mr. Chairman, when it comes to the Export Administration Act, particularly when you have these three departments represented, you kind of feel like a mosquito in a nudist colony. You know you've got a lot of material to work with but you're just not quite sure where to start.

I guess where I'd like to start is——

Mr. Kloske. I guess we should run for cover, Senator. [Laughter.]

Senator Heinz. That's the first time they've scored on us in quite a while.

Senator Boni. No, it's not.

Senator Heinz. Maybe just on you. In any event, I'd like to ask the administration by turns—and I'll start with DOD and then State and then Commerce—exactly what the position of our allies is on two of the issues that you've mentioned and one that you haven't, and what our position is.

The first is on the issue of differentiation. The second is on the issue of going immediately to the greenline. This is for Eastern

Europe and/or the Soviet Union. And third, whether there should be any conditionality.

Mr. Hadley, what's the position as you understand it of our allies on differentiation? Do they favor it or are they against it?

Mr. **Hadley**. As I tried to indicate, Senator, it's a mixed bag. There are some allies that are supportive of us. Some take the view that I suggested that there should not be differentiation. Allan Wendt was at those discussions and he can give you——

Senator **Heinz**. Were you there?

Mr. **Hadley**. No, I was not.

Senator **Heinz**. Then I should ask Allan Wendt. Allan, what are our allies' positions on differentiation, greenline and conditionality?

Mr. **Wendt**. Actually, Senator, let me correct the record. I was not at this most recent meeting.

Senator **Heinz**. Were any of the three of you there?

Mr. **Wendt**. I can answer the question.

Senator **Heinz**. No. I just want to know, were any of the witnesses actually at the meeting?

Mr. **Kloske**. No.

Senator **Heinz**. Well, go ahead and answer it, but let the record show it's secondhand.

Mr. **Wendt**. Well, we have had a full account of the meeting and we have had extensive contacts with all the countries involved, so I do think we are in a position to answer the question.

If I could generalize, I would say that most of our partners in CoCom would accept some degree of differentiation, but at a higher threshold of technology. For example, if we decontrolled up to the China greenline, they would envisage differentiation above that line. But their approach—and I am generalizing—is immediate decontrol to the China greenline more or less.

Senator **Heinz**. And then above that still more for Eastern Europe and not the Soviet Union?

Mr. **Wendt**. Above that, they are prepared to consider differentiation. We haven't gotten into details.

Senator **Heinz**. That's very helpful and everybody understands that.

Now our position is very different than that. Our position is, as of this moment—it may be under review—that while we support differentiation in principle, we are not about to decontrol much of anything to the China greenline except for three out of the 33 categories that you mentioned. Isn't that our current position?

Mr. **Wendt**. Not quite, no.

Senator **Heinz**. OK. What is it?

Mr. **Wendt**. In the interim proposals that we've put on the table at CoCom, there was a measure of across-the-board decontrol. In other words, all destinations. That would apply to the Soviet Union as well as Eastern Europe. So to that extent, no differentiation was involved.

In a second phase of those interim proposals, we envisaged going further and in some instances up to the China greenline, and in one case I can think of actually going beyond that for Eastern Europe subject to Eastern European countries' adoption of safeguards.

Senator HEINZ. Right. So in a lot of areas you are not for any differentiation and in these narrower areas you are?

Mr. WENDT. We want to decontrol outright as much as we can. As I said, in the first phase some measure of decontrol, but then we expect to present comprehensive proposals based on the strategic review that will go a lot further toward decontrol, so no differentiation.

Senator HEINZ. Mr. Kloske, in 1988, then Deputy Secretary of State, John Whitehead, indicated that the U.S. had made a commitment at CoCom to undertake streamlining—not review, but to streamline the CoCom control list in return for CoCom member states agreeing to beef up their enforcement system, which they did.

Have we lived up to our side of that agreement?

Mr. KLOSKE. I don't think we have gone very far in the area of streamlining, Senator. I think that is one revolving around the results of the national security review and we are awaiting the results of the intelligence community and a report from the Joint Chiefs of Staff.

But between that commitment and today, the answer is no.

Senator HEINZ. Now that's 2 years. To most of us who are not involved and don't understand whether you're trying to reinvent the wheel or whether you're inventing something very new, we don't know whether that's a long time to wait or not.

Could we have done it by now if we had tried?

Mr. KLOSKE. Oh, sure.

Senator HEINZ. Why haven't we?

Mr. KLOSKE. Well, first of all, you had the transition from one administration to the other, new teams coming into place, new policies being developed, and the threat assessment which is still under review.

Now having said that, I think any industrialist operating in the high technology sector would say that 2 years is history and at a time when you have an accelerating process of research and development where the product introduction cycles have been narrowed from 2 years to 6 months, if you compare 6 months that you need to get your product and obtain an export license and the fact that you haven't done anything with your export control list for 2 years, you're going to be seriously disadvantaged.

Senator HEINZ. I see my time has expired, but what I hear you saying is that there are all kinds of perfectly reasonable reasons for not having streamlined the list yet. The fact that we haven't done it is unreasonable in the sense that what we are doing is hopelessly prejudicing U.S. manufacturers because we are just not moving with the technology that everybody else is moving forward with.

Mr. KLOSKE. Senator, my belief is that if the regulatory regime in this country cannot align itself with the new political circumstances and new developments in technology, you will hopelessly prejudice U.S. industry.

Senator HEINZ. Is there any disagreement from Mr. Hadley or Mr. Wendt with that statement?

Mr. HADLEY. Basically, no. I would say three things.

Senator Heinz. That was a good answer. You may not want to mess it up.

Mr. Hadley. I probably will, Senator, and I should take your advice, but I would just say three things.

One, there will be disagreement on how much streamlining has or has not occurred, but obviously the events in Eastern Europe have increased the need to accelerate that process. Remember, we're sort of looking back at history from the current situation.

Second, on the interagency process, this team has made an effort to try and work collegially and expeditiously at all levels. These are issues that if they can't be resolved at a lower level, they are elevated for a decision. The package of proposals that were made on telecommunications, computers and machine tools was reviewed at very senior levels in this Government to make sure everyone was on board. So we are trying to develop a process that reconciles the interests but does it in a prompt way that gets decisions, because that's clearly what's required.

Senator Sarbanes. How long have you been doing that process?

Mr. Hadley. Well, I think one of the things that happened early on is particularly pertinent in connection with some foreign availability issues. We became concerned that the process was not moving expeditiously and representatives here at this table, and at more senior levels in our agencies sat down and really talked about the process.

Senator Sarbanes. When did they do that?

Mr. Hadley. These initial meetings were in April and May, which I think really indicated that we needed to address this issue and I think we have.

Senator Sarbanes. Thank you.

Senator Heinz. I think Allan Wendt had a brief comment.

Mr. Wendt. Senator, just a very brief comment. I would certainly agree with the general proposition that a lot more needs to be done in the streamlining area. A lot more should be done.

Senator Heinz. That wasn't what Dennis Kloske said. Dennis Kloske said that to the extent the bureaucracy can't keep up with political reality and technological reality, the bureaucracy, whether it's Commerce or Defense or State, is undermining the national security and the economic security of this country. That's the sum and substance of what he said. The Defense Department agreed. Does State disagree?

Mr. Wendt. If we are incapable of streamlining the control lists, I would agree.

Senator Heinz. This is a little broader question.

Mr. Wendt. But we are capable of streamlining the control lists and we're doing it. As I said earlier, it is on a fast track. It will be possible very soon to judge the results of this exercise. This is not something that's going to be long and drawn out. We are moving very quickly.

I do want to point out that it's a little bit like base closings. Everybody is for it, but the devil is in the details. When it comes to the specifics, sometimes very hard choices have to be made and reasonable people may disagree on what those choices are.

On the subject of U.S. competitiveness, CoCom operates by consensus. If the system is operating at all, then if a U.S. exporter can't export it, neither can an exporter from one of the other member countries.

Senator HEINZ. Thank you.

Senator SARBANES. Senator Mack.

Senator MACK. Thank you, Mr. Chairman.

Mr. Hadley, I want to I guess raise some questions with the focus that I mentioned in my opening statement.

Is it true that the Soviets have stepped up their efforts to target high technologies in the West?

Mr. HADLEY. There is a lot of discussion on that, but I think what I certainly can say in this session is that there is no indication that they have in any way reduced their efforts to acquire technology in the West. Indeed, there's some evidence to the contrary and we also see some continuing cooperation with the East European governments and intelligence services to help that process. That is one of the things——

Senator MACK. Let me get you to stop and refocus. Say that again. The Soviets and the East European countries what?

Mr. HADLEY. There continues to be some cooperation between Soviet and East European intelligence services in that respect. DCI Webster in a speech that was given on February 20 talked about this point; so this is something that's been said publicly. That is why one of the things that we have been saying: when you talk about relaxation of controls for East Europeans, first, you want to have export control regimes to make sure things are not diverted to the Soviet Union; second, those regimes would be more effective if there are freely elected governments in office; and third, we would like to see cessation of this cooperation between intelligence services of the Eastern Europeans and the Soviet Union.

Relaxation of controls for Eastern Europe looks much different if you can have high confidence that goods and technologies won't go to the Soviet Union.

Senator MACK. Is there a difference of opinion with our allies with respect to a continuing relationship between Eastern European intelligence and Soviet intelligence? Is there a difference of opinion as to whether those relationships are continuing?

Mr. HADLEY. Senator, that's a question I'm afraid I cannot answer. I do not know how much of this our intelligence services shared with our European allies. I am not aware of a dispute, but I have not specifically asked that question. There may be others here who can answer it. I cannot.

Mr. KLOSKE. I think, Senator, one of the things that the administration has focused on and we developed at Commerce at the behest of the National Security Council was a series of safeguard proposals that we would share with each of the East European countries that has indicated a willingness to adopt export enforcement regimes. We have been in contact in the last few weeks with the embassies and the various players and we are standing by to pursue additional discussions with them to advise them on how to set up export enforcement regimes.

These safeguard proposals touch on the legal, the administrative and the enforcement and verification procedures that each of these countries needs to adopt and I think that's part and parcel of the bargain. If they're going to have access to Western technology and modernize their infrastructures, it is incumbent upon them to set up the same kind of regulatory regimes that exist in CoCom today.

We have received indications from each of these countries that they are willing to do so.

One of the things that I think all of us at this table agree on is that as a point of departure we are certainly going to encourage them to sever their connections, both overt and covert, in their attempts to obtain illegally Western technology that could be diverted for military purposes in-house, which could be diverted to countries of concern, for example in the Middle East for hard cash, or which could at the same time be diverted to the Soviet Union.

Senator MACK. I would assume that this discussion we have had then having to do with the economic and political realities, that one of the realities that we want to make sure we understand—not perceptions but realities—would be that there is no longer any relationship between intelligence operations in Eastern Europe and the Soviet Union.

Mr. KLOSKE. That is definitely one of the things that we intend to——

Senator MACK. I assume when you agreed with the statement made that that was one of the points that you were trying to raise.

Mr. HADLEY. Absolutely, and a point that, sure, we need to do streamlining, but the bottom line point is also we need to do intelligent streamlining because, as I said in my opening statement, there are some things that we are at the end of the day going to want to protect. The trick is to streamline those things that are not critical and safeguard those things that are essential. This is the crucial element of that latter point.

Senator MACK. Mr. Wendt.

Mr. WENDT. Senator, in response to your specific question about how our allies see this situation, I don't think that they would dispute that there is a real question about intelligence links among countries that are still members of the Warsaw Pact.

But they would argue that it is difficult to rely on safeguards and a more reasonable approach is across-the-board streamlining to the greatest extent possible because a differentiated regime will be difficult and hard to implement in practice. That is their view.

Senator MACK. Would they be arguing then for a lower line and give up the differential?

Mr. WENDT. No. Well, as far as the United States is concerned, for the sake of discussion, if we were to reject the notion of differentiation, we would not be able to go as far in dealing with the countries in Eastern Europe as we think we can if there is differentiation.

In other words, we think the safeguards can have a real impact. If these countries make a commitment, which some of them appear prepared to do and so they have indicated to us, to safeguard the technology—and that's a national commitment and they are prepared even to accept things like on-site verification, we think that will make a real difference. It will establish a commitment on their part that we can hold them to and in the end we would expect that they would find it not in their interest to allow diversions to take place.

Senator **Mack**. Just one last point, Mr. Chairman. I just want to get a point clear in my mind. Well, I've forgotten what the point is, so we'll go on to the next one.

Senator **Sarbanes**. Perhaps Senator Bond will yield to you.

Senator **Mack**. When the thought comes back? I hope so.

Senator **Bond**. Thank you, Mr. Chairman.

Mr. Kloske, we've all heard a great deal and you've mentioned the great concern of exporters over the definition of supercomputers and I know that you've put a great deal of time and effort in this in taking comments and testimony.

I would be interested in hearing how the process is progressing and when you expect it to be completed, how you expect it will come out, and ask whether it might be possible, rather than to have to establish a fixed standard, if there would be some means of pegging a definition to advancing technology which would provide a moving target as technology advances?

Mr. **Kloske**. Yes, Senator. Let me first just give you a little background very quickly.

When we published our proposed regulation on defining the supercomputer for national security export controls, I received many comments from the industry about their concern that this would have a deleterious effect on them. So on the advice of my staff I decided to do what I get paid to do, which is spend a lot of time with the industry.

So we decided to have public hearings in the various high technology sectors of the Nation.

The response that we obtained was at three levels. One, we had the best technical experts in the United States in the high performance computer industry come forward and explain to us or remind us that again this Nation, at least in this industrial sector, is entering a second technological revolution where the computing parameters are exploding almost on an exponential basis.

I mentioned in my opening statement that today this chip has the same processing capability by the end of the year of a Cray I. That is the technological revolution that we have to deal with. If I gave you this chip and you left the country, I would have to arrest you.

Now since Intel intends to make hundreds of thousands of these, we are dealing with a major problem on how the technological developments of this country, which I think every member of this committee is interested in because we are interested in competitiveness and technological development, I cannot go back to the industry and say:

> Excuse me, because this is a supercomputer, I'm going to pose 24-hour-a-day surveillance on this chip and require that for each chip that goes overseas you have to sign a Government agreement and impose a special security plan.

That is what happens when you define this chip as a supercomputer. That's the first thing.

The second thing that they brought to our attention is that again in the area of high performing computational capability and technology the United States retains the technological and competitive lead but is facing stiff and severe competition not only from Japan, but what was really surprising to us is how aggressively the West

Europeans are moving into this arena and British companies and German companies are bringing to the market and have already installed computers which exceed our proposed interim regulation and are not subject, by the way, to the same export controls as we impose on our companies in this country.

Third, the computer experts and the various CEO's from the various companies came forward and indicated to us:

> Look, we need to work with the Government and we need to work with the regulatory regime, but if you set this threshold which is basically an antique and obsolete threshold as far as we're concerned, we're going to begin to design under spec so we don't risk being penalized by the Government for state-of-the-art technological innovation.

Now I think at a time that we are entering the 1990's, we have to be very, very careful that we don't impose through our regulatory activities a chilling and deleterious impact on the high technology industry and I would just add that the high technology industry today is the greatest source of export competitiveness for this Nation. It is also the main industry which is very heavily regulated by the national security controls.

So coming back to the point what is it that we intend to do, well, what we intend to do is based on the testimony that we received. It's to go back to the drawing boards and provide the industry with what I hope will be a more flexible and a kinder, gentler definition for West-West purposes.

I just want to emphasize that this definition exercise for high performance supercomputers is just for intra-CoCom trade. The Commerce Department nor any other agency has any intention of exporting high performance computers any time soon either to the Eastern bloc or countries of concern.

So, my staff is now working on reworking the regulation and in the next several weeks we intend to publish it for comment and obtain the other comments from the other agencies. But I would suspect, in view of what we have learned, that the only way to go is to go upward first, and second, because technology in this area is accelerating so quickly, that we need to have a continuous review. Whether it's quarterly or semiannual or annual I have yet to determine.

Last, I just need to point out that we in Washington have to be very careful that we don't become a high priesthood that operates on star chamber regulations with nontransparency. We have to work with our industry. Our industry and its innovation and its health is absolutely critical not only to our export competitiveness, but also to our national security. So we have to make sure that we have a regulatory regime that is aligned with these new technological and political realities. Thank you, sir.

Senator BOND. Well, I appreciate that answer. In the time I have left, let me say that as I witness this sophisticated and informed discussion of the three representatives of the different agencies of this administration, I am struck not so much by Senator Heinz' analogy of a mosquito in a nudist colony as perhaps that immortal television line of Clara Peller, "Where's the beef?"

Gentlemen, I would be interested in knowing whether the administration is going to be able to solve the different tensions among you, whether you would like us to set up a separate Presidential agency directed to settle it, or whether you would expect that we in Congress, God forbid, would attempt to impose a settlement on them. Would the three of you care to comment on how we're going to resolve these differing views?

Mr. **Kloske**. Senator, if I could comment, it's Commerce's point of view that we have been working as well as we can with the two other agencies and I'm happy to say that we have collegial and cooperative relations with each of the agencies and I think there is a commitment from the highest level on down to make sure that we can straighten out these problems as soon as possible.

I don't think it's on the matter of collegiality or cooperation which we're going to fall. It's the issue of arriving on a clear and precise definition for the 1990's as to what is truly strategic and what needs to be controlled. We are certainly looking forward to the recommendations from the intelligence community and from the assessment of the Joint Chiefs of Staff because as I understand it this report will allow us to proceed forward in doing the streamlining and rationalization that we need to carry out.

So, I think this is an absolutely critical document and hopefully, as my colleague, Ambassador Wendt, pointed out, if that document comes out with a proper assessment that reflects the technological and political realities of the 1990's, we can move forward speedily and we don't have to come back to you here and show you lite beef but real beef.

Senator **Bond**. Mr. Chairman, if I might, I would appreciate the opportunity to hear Ambassador Wendt and Assistant Secretary Hadley's comments on the procedural question.

Senator **Sarbanes**. Certainly.

Mr. **Wendt**. Senator, I think we have the means at our disposal to deal effectively with this issue. I think the Export Administration Act as it currently stands gives us the flexibility we need.

Senator **Sarbanes**. It gives you all the flexibility in the world.

Mr. **Wendt**. It does. I agree, Senator.

Senator **Sarbanes**. You can have no licenses whatever.

Mr. **Wendt**. Well, Mr. Chairman, I think we are certainly headed——

Senator **Sarbanes**. I'm not advocating that, but it can all be worked out right there.

Mr. **Wendt**. We are certainly headed toward a very, very significant reduction in controls. I am convinced of that. I cannot predict the precise outcome of the study that is being undertaken, but I think all three of us know that we are headed in that direction. We all three recognize that we are in an entirely different strategic environment, and that the United States not only has to adapt to that new situation it has to lead the adaptation.

I entirely agree with what all of you have said. We don't want to be simply in a reactive posture. We want to be ahead of the curve. That's why we started already last fall to develop new proposals. We saw what was coming and we were ready at this meeting in February, which wasn't scheduled with a lot of lead time, with very specific proposals, both on an overall approach and on specific areas—telecommunications, computers and machine tools—that account for 80 percent of the cases the United States sends to CoCom.

So I think we can do it and we are moving well together and I think at the end of the day you will see progress that will allay your concerns.

Mr. **Hadley**. I would simply say that it's an important policy matter. It requires reconciling of interests, the kinds of interests of the business community that Dennis has been articulating. It's a reconciliation of our position with our allies because we need to go forward with them. There are also legitimate national security interests and concerns in here and what we need is a policy that will reconcile them.

The President has tasked the NSR to provide the basis for coming up with a policy that balances and reconciles those concerns and if it can't be worked out at this table, I'm quite confident the President is prepared with his advisers to set the policy of the administration.

Senator **Bond**. Thank you, Mr. Chairman.

Senator **Sarbanes**. Who constitutes this interagency group?

Mr. **Wendt**. Mr. Chairman, there is a policy coordinating committee, PCC, which meets at roughly the Assistant Secretary level. It meets frequently, particularly these days, and it is chaired by the National Security Council staff. I think that is in recognition of the importance that the White House attaches to these issues.

We also have an executive committee of the policy coordinating committee which I chair which deals with a lot of day-to-day issues that have to be resolved. That also meets at roughly the same level.

I think that the issue is getting lots of attention, very high level attention from the President on down, and we all know that we have to move and we have to move quickly, but we also have to move thoughtfully. It has to be a disciplined, well-thought-out process. Otherwise, you can make mistakes which we would end up regretting. But we are moving and I think we have the interagency machinery to do it.

If issues have to be escalated above the level of the policy coordinating committee, there is the deputies committee of the National Security Council which also meets from time to time to look at these issues, and there has been at least one meeting of the National Security Council that I'm aware of with the President in attendance that also looked at these issues.

Senator **Sarbanes**. Well, let me make this observation. Obviously, we have to now address the issue of reauthorizing this legislation since it expires on September 30. Now obviously, the issue will be put more pointedly to the committee if the administration isn't able to adjust to changing circumstances and there's a perception that somehow they just can't stay up with events.

As I noted at the very outset, the legislation does not impede you from adjusting to events. It gives you, in effect, a wide open field on which to maneuver, if there's some maneuvering involved. Since much of it is in consultation with others if any regime is to be effective and those negotiations are done by an administration and not by the Congress.

So I'm interested in the timetable under which we are going to be able to see from the administration what adjustments it's making to the circumstances. When are we going to be able to see that?

Mr. **Wendt**. Well, there is a meeting, a high level CoCom meeting that's already scheduled for early June. It is at that meeting that decisions will be taken by the CoCom member countries on the issues we've been discussing here today. That is an important event.

We will be ready for it. That's why we have commissioned the strategic assessments on the basis of which we will draw up a set of new proposals for comprehensive streamlining of the CoCom lists. We also have committees meeting already in CoCom on priority areas, the ones that we mentioned in our testimony. Their work has to be completed by the end of May.

So all of this work is on a fast track and we will be in a position to inform the Congress of the progress that we have made in the very near future.

Senator **Sarbanes**. Does everyone agree?

Mr. **Kloske**. I would just reserve my position on the results of the NSR.

Senator **Sarbanes**. What do you mean reserve your position?

Mr. **Kloske**. We will move forward if the NSR says we need to move forward. If the national security review says we do not move forward, then we don't move forward. It's that simple, Mr. Chairman.

As you know, the Secretary of Defense and the DCI are having an exchange as to whether we are going to move forward or not in terms of the threat, and that is what this exercise is designed to do, give us an appreciation of what the threat is to the United States and the Atlantic Alliance in the 1990's on the risk of technology diversion and what, if any, technologies can be streamlined, rationalized or decontrolled.

Senator **Sarbanes**. Now wait a second. That's not my understanding of what's happening. My perception, including the answers at the table this morning, was that there is no difference in certain areas. I think everyone is prepared to concede that certain easing needs to take place. The question then becomes how far up do you go in the scale in that regard. In other words, if that's the case, there's no dispute over the necessity for some change. The question is how much change. Is that not right?

Mr. **Kloske**. That's correct.

Senator **Sarbanes**. Does the Defense Department disagree with that?

Mr. **Hadley**. No, Mr. Chairman.

Senator **Sarbanes**. Does the Defense Department concede now that the administration is maintaining controls, at least some controls, in some areas they need not be maintained in?

Mr. **Hadley**. Mr. Chairman, we have; but I need to point out that in the three areas which everyone concedes are the most important areas—telecommunications, computers and machine tools—the administration has made the proposals for substantial relaxation of controls that are now on the table in CoCom. Some relaxation would be made across-the-board right now to both the Soviet Union and East Europe. Additional relaxation of controls on goods that would go to Eastern Europe would occur when they have adopted freely elected governments, when they have provisions for export controls, and most importantly when they have ended their ties to Soviet intelligence.

So we have proposals on the table right now that are a substantial relaxation of controls. The issue is how much further we go and where. That is what the NSR process has set out, and it basically requires the JCS and intelligence inputs by the end of March. It calls for comprehensive proposals the end of April. These would be dealt with, as Ambassador Wendt suggested, in some CoCom committees in May and then would be reviewed in June at a high level meeting. So that's the schedule and that's a pretty sporty one.

Senator **SARBANES**. So you would have your proposals by the end of April in preparation for the June meeting. In other words, we would know here by the end of April how the administration, given the full discretion it has under this legislation, is proposing to alter the control system. Is that correct?

Mr. **HADLEY**. That's the schedule that has been set out for us, yes, Mr. Chairman.

Senator **SARBANES**. Senator Heinz.

Senator **HEINZ**. Thank you, Mr. Chairman.

I just want to get something clear. Does anyone here want to speak about the record of diversions for legally obtained controlled technologies for Poland, Hungary and Czechoslovakia? Does anybody know whether there have been any diversions of legally obtained but controlled technologies from either of those three countries?

Mr. **WENDT**. Senator, my understanding—and my colleagues may want to address this point if their understanding is not the same as mine—with those three countries, to the best of my knowledge, we have not had difficulties on items that we have legally exported to them.

Senator **HEINZ**. But they have had a good record? Is that your understanding, Mr. Kloske?

Mr. **KLOSKE**. That is correct.

Senator **HEINZ**. Mr. Hadley, is that your understanding?

Mr. **HADLEY**. This is a difficult issue.

Senator **HEINZ**. Well, I'm talking about legally obtained technologies. Why is it difficult? Two people have said that they've got a good record.

Mr. **HADLEY**. Because it varies country to country.

Senator Heinz. Well, I'm talking about Poland, Hungary and Czechoslovakia.

Mr. **HADLEY**. What I would characterize as the general pattern is—and this is one of the reasons it gives us some hope for export regimes that these countries might adopt——

Senator **HEINZ**. Remember, this is when they were Communist countries. This is not now that they are democracies. This is when they were Communist countries.

Mr. **HADLEY**. We find the phenomenon that—again, I would have to talk to our intelligence people to address each of them individually because they do change country by country, but the general phenomenon we have found is that there's a tendency to respect restrictions on legally obtained items. At the same time——

Senator **HEINZ**. So, you are basically agreeing with them on that?

Mr. **Hadley**. At the same time, there are active efforts to obtain items by illegal means.

Senator **Heinz**. Yes. There are Soviet fronts, the KGB and other fronts, that have been active. And that wasn't my question. We know that. That's on the record. Nobody disputes that. I'm just talking about legally obtained technology.

Mr. **Hadley**. My understanding is that that's correct, but I would have to get chapter and verse on the individual countries.

Senator **Heinz**. One of the——

Mr. **Kloske**. Senator, could I make a point? I'm not a lawyer but I'm sure you are and you spend most of your time worrying about legislation. I think you raise an interesting point. How would one describe whether it's legal or not legal to obtain technologies that are on the proscribed CoCom list but can be freely acquired in Taiwan and South Korea?

Senator **Heinz**. We would determine that on the basis that they are available under the foreign availability section of the Export Administration Act.

Mr. **Kloske**. Thank you, sir.

Senator **Heinz**. What would you call them?

Mr. **Kloske**. Foreign availability.

Senator **Heinz**. I want to ask about foreign availability because—let's assume, contrary to everything that's happened to date, that somehow we will make an agreement with our CoCom allies that will keep them in CoCom and not continue the breaking up of CoCom which has been going on for the last several years. You ask, "Senator, what do you mean the breaking up of CoCom?" I mean that our CoCom partners have elected in many instances not to submit to CoCom transfers of technology to the Soviet Union because they think we are unreasonable. As a result, there are words like Alcatel and Simon Carves and Olivetti. All of you know what I'm talking about and I won't go into it in detail, but basically those are all major sales of technology to the Soviet Union where our allies said, "To heck with CoCom. The United States will just block those sales, and we're not submitting them."

So we have had problems in CoCom even before the issue of greenlines was raised. But let's assume we work something out with our allies. Let's assume, too, that we are prompt to implement it, even though we haven't implemented the streamlining agreement from 2 years ago. Let's suspend disbelief from that and let's just look at how we might implement anything domestically.

I'd like to ask Mr. Kloske if this chronology I'm about to give is correct. Is it true that in the summer of 1987 that the President agreed with the Commerce recommendation that the President find that there was foreign availability West-West and East-West of wire bonder technology?

Mr. **Kloske**. Yes.

Senator **Heinz**. Now that was a Presidential decision in the summer of 1987.

One year after that, the summer of 1988, had the President's decision been implemented?

Mr. **Kloske**. The record gets a bit murky there, Senator. From what I understand, somebody went back to the President and said, "Why don't you folks go back and take another look at this issue and see if you can"——

Senator HEINZ. Is it or is it not true that a year later, the summer of 1988, the Commerce Department prepared a cable to notify CoCom to decontrol wire bonders East-West?

Mr. KLOSKE. This is true.

Senator HEINZ. Is it true that there was an objection by the Department of Defense and they refused to clear the cable? Is that true?

Mr. KLOSKE. I think there was an objection from the Department of Defense and the National Security Council instructed that the issue be revisited by the intelligence community.

Senator HEINZ. That's right. It was revisited starting in the summer a year after the President had made a decision. Then there was a so-called compromise where they held up decontrol, they negotiated with the alternative suppliers—the alternative suppliers who shall be nameless—but they can be found in a neutral country located between Italy and France—refused to go along and impose controls, and almost a year later this issue was brought to the President's attention because I wrote to him and talked to you, among other people, Mr. Kloske.

When did the President's decision of summer 1987 finally get implemented in this case by the President?

Mr. KLOSKE. January 19, 1990.

Senator HEINZ. So, it took 2½ years for a decision by the President to get implemented. You can't go any higher. This is why I'm intrigued by what my chairman is saying, you guys can work it all out. Even when the President of the United States make the decision, they can't work it out.

Senator SARBANES. Well, my understanding is that the President either unmade the decision or never really made it—I'm not quite sure. We're getting increasing questions about the decision-making process in the previous administration, so——

Senator HEINZ. Now, now.

Senator SARBANES. So, it's an interesting case, but I'm a little more concerned with what this administration is doing. They are the ones that are now before us. The previous administration was so resistant on this issue that the Congress in the 1988 trade bill had to revise the act and in effect impose substantive standards, limited ones, because as soon as we move into that area, then we get all the concerns expressed by Defense and others about what's happening. Nevertheless, we established certain substantive standards. We need not have done that if the administration was doing what it should be doing. In fact, in the end the administration was generally acceptable of the substantive standards that came from the Congress. In effect, we forced some resolution of issues and some decisionmaking within the administration.

Now the question is, with this new administration, more on top of things, more knowing what's going on, new personnel in here—whether this administration can work things out. But I hear these horror stories that Secretary Kloske is telling me and I'm saying, "What's going on downtown?" How did you ever throw out a thing on computers when you put out the regulation that provoked such a reaction that it didn't make any sense, that you went on a crosscountry tour then and came back in here and tell us it really doesn't make any sense. Here are all these little things here I'm showing you just to demonstrate—to demonstrate to the committee how nonsensical your proposal was. Now that's some state of affairs in here this morning.

I didn't mean to use your time.

Senator **Heinz**. That's all right. I thought your points were very interesting. I would like to point out that the fellow who made the decision back in the summer of 1987 was a President who referred to the Soviet Union as I think the "Evil Empire."

Senator **Sarbanes**. He did that 4 years earlier before he had the meeting.

Senator **Heinz**. There's an implication that I don't think you meant that Ronald Reagan was soft on communism and that his administration was making these large, generous grants of technology to the Soviet Union. Neither Richard Perle, who guarded the gates, nor his successor, Mr. Bryen would have done that. They were there, I assure you, the same people were there all the time. I guess Mr. Hadley has that chair or one of those chairs now.

The problem is that where you sit has a lot to do with where you stand on any of these issues and the result is that we have a three-headed monster—no offense, gentlemen, you are perfectly good-looking, but the fact is that we have a three-headed monster that attempts to administer the Export Administration Act.

I'm giving the system in this hypothetical the benefit of the doubt that they can agree on policy. We'll see. History doesn't lead you to be optimistic. But what you can't ignore is that even after there is policy, there is the implementation of it. The fact is that everybody has a bite of the apple and people just keep nibbling away. The one thing that never happens is the person who has tried to sell the Apple or the Intel chip, as the case may be, never gets to do it because by the time we're through nibbling away at the Apple computer for Poland Solidarity or on other technologies, somebody else has the order. They may or may not be a CoCom ally.

That's why Senator Garn and I think that even though every single person in the bureaucracy will be against it, we should take all our export administration related authorities and combine them into one agency so that as the least we will get implementation of presidential decisions.

Now Senator Sarbanes is brilliant because he says let them stew in their own juice. If you guys can't work it out, it's your fault. It's the Republicans' fault. And he's got a point. He's saying if you guys want to bring the country down, go ahead; I didn't vote for you; some other people did and maybe they will wise up next time. I mean that's what he's saying.

Senator **Sarbanes**. Well, actually I haven't said that.

Senator **Heinz**. I'm being liberal in my interpretation, but I think you would agree it's not an unfair characterization.

Senator **Sarbanes**. No, I don't agree with that, nor did I mean to imply it. But I do think I want it to be very clear that the problems that they are talking about are not as a consequence of congressional action. What the Congress has done is authorize administrations—not just this one but previous ones—to impose controls. It doesn't require them to do so. In fact, it's within the range of discretion of the administration to lift controls, in fact to life all of them.

Now I would be opposed to lifting all of them. So, it's a question of where the line is drawn. But they can draw the line. They can draw a much better line than they've drawn right now and a line that I think would meet general acceptance in the Congress. But you have to go pretty far before I think the line they drew would provoke controversy in the Congress. At some point it would do that.

Senator HEINZ. As a matter of fact, you are absolutely right. I was drawing an inference and I am entitled to draw my inferences.

Senator SARBANES. Well, I don't think you should take them off the hot spot. They've got an April deadline here.

Senator HEINZ. We are not going to take them off the hot spot.

Senator SARBANES. They ought to be under some pressure to produce a result that people generally look at and say that's sensible finally.

Senator HEINZ. Mr. Chairman, may I ask one last question?

Senator SARBANES. Surely.

Senator HEINZ. According to recent press reports the Director of the Central Intelligence Agency, Bill Webster, told the House Armed Services Committee that the Soviet Union has made a historic move away from militarism. He stated that even if a hard line Communist regime took over in the Soviet Union, "It would have little incentive to engage in major confrontation with the United States." Those same press reports note that Secretary of Defense Cheney criticized Bill Webster's testimony as not helpful, noting that he, Cheney, feels strongly about the Soviet threat and that he believes that Mr. Webster's assessment was wrong.

Let me ask, Mr. Kloske, whose assessment do you believe is more accurate, the CIA or the Secretary of Defense?

Mr. KLOSKE. Well, I would pick and choose from both assessments, Senator.

Senator HEINZ. You're going to be around for a long time.

Mr. KLOSKE. Maybe Allan will give me a job at the State Department.

Senator HEINZ. You've earned it. If you don't come up with a more direct answer, you may deserve it.

Mr. KLOSKE. I would say that the Director of the Central Intelligence Agency has a very strong point when he says that the main objectives of the Soviet Union today are domestic ones.

From my personal point of view, both in Commerce and formerly 6 years at the Department of Defense, it's very clear to me that the Soviet Union is on the verge of political and economic chaos. The standards of living have declined precipitously since the days of Breshnev and I think Secretary-General Gorbachev fully understands that if he cannot deliver internally it is the end of the communist party and it is the end of the Soviet Union of Socialist Republics as we understand it today.

Coming back to Secretary of Defense Cheney's concerns, I think one issue that this Nation and the Atlantic Alliance, if it's still with us in the next several years, needs to address is, just because the Communist party is going to wither away it does not mean that you won't have to deal with the Soviet Union in terms of resurgent Russian nationalism. I think many historians would point out the fact that Russia as a political and geomilitary entity has been expanding from Moscow and Kiev for the last 500 years and just because we're dealing not with Peter the Great but Gorbachev the Tenuous does not mean that his successors could not continue to, if the elements were correct and appropriate, to pose a significant military threat over time. If not as a superpower, certainly as a dominant military power that would overshadow events in central Europe.

So I think both of them have elements that I would certainly subscribe to.

Now having said that, it would be nice if we were to obtain some stronger and clearer guidance because, needless to say, their joint assessment of a threat underlies the whole foundation of national security export controls.

Senator **Heinz**. I guess, without asking the other two to comment, what you say kind of proves how difficult it's going to be for the administration to draw some fairly clear lines because if you say on the one hand and on the other—and what you've said is probably fairly accurate—nonetheless, it is a very complex view of what the national security threat of the Soviet Union could be under certain circumstances if you say, well, there is this range of possibilities—there won't be a Communist government, there's nationalism resurgence, they can't deliver an automobile but they can deliver a guided missile, under the worst case circumstance over here things could be bad, therefore we shouldn't sell them anything that they might use to improve the accuracy of their missiles.

Mr. **Kloske**. That's not my view.

Senator **Heinz**. I'm not saying that's what you said. But that's kind of the way it is. Nobody knows what the future is going to be like in the Soviet Union.

But if we base our export administration policy on the most adverse possible future, we'll never make any change.

Mr. **Kloske**. This is correct, and I don't subscribe to that, Senator. I think, just as this nation and its top leadership needs to think strategically and we are thinking strategically, I think the same kind of conditions apply to the EAA and the administration of export controls.

Senator **Heinz**. I'd like to hear Mr. Hadley and Mr. Wendt on this point.

Mr. **Kloske**. Could I just make one more comment before I finish?

Senator **Heinz**. Sure.

Mr. **Kloske**. Thinking strategically means that you fully understand the strategic impact of your export control regime on the research and development and the military progress that a potential adversary is going to make over time. I personally believe that our control list today is much too comprehensive and in our attempt to control everything we end up controlling very little. And I really think that for the 1990's we have to think more in terms of core lists that are directly aligned to that nation's military effort and make sure that you can control that but control it selectively, qualitatively and strategically.

Senator HEINZ. To which you might add that in this day and age of a very competitive world, where economies of scale are terribly important, where getting the product to the market before the product becomes obsolete is very important, so you can make the money to make the investment in the research and development and engineering and product introduction of the next product which may have to be out within the next year, a regulatory regime which for all intents and purposes limits the market opportunities of U.S. companies to less than those of other countries inevitably means we're going to not only not have the jobs but we won't have the base to develop the research and development that our Defense Department and everybody else thinks is rather important.

Mr. KLOSKE. I would agree with that.

Senator HEINZ. Do you agree with that, Mr. Hadley?

Mr. HADLEY. I do, Senator, and I'd like to try and answer your question. I think we need to focus on where Secretary Cheney and the Director agreed. If you look at the Director's testimony, he said, "Nevertheless, the long-term outlook for the present leadership and for the Soviet Union itself is uncertain." And he talks about some of the uncertainties. Then he says, "Instability will be fueled by serious and still mounting economic problems."

I think what you have to do is make these assessments in the context of this uncertainty. I think you can, but it informs your judgments about what you give up, what you relax controls on, and what you retain. And it is also one of the reasons why you make a differentiation between the Soviet Union and Eastern Europe because we think the evolution in Eastern Europe is less uncertain than in the Soviet Union.

So I don't think you have to pick a scenario, but I think you can adopt an approach that hedges and tries to deal with the uncertainty. Of course the bottom line is to try and bring our CoCom allies into line so it is a level playing field and so that American industry is not disadvantaged in the way you suggest.

Senator HEINZ. Mr. Chairman, thank you very much.

Senator SARBANES. Isn't the problem in terms of numbers of licenses and so forth essentially on the West-West trade front?

Mr. KLOSKE. Yes.

Senator SARBANES. I mean all the focus is on this trade with Eastern Europe and the Soviet Union, but in terms of amount and dollars and so forth that's relatively insignificant. The real issue that's the impediment is the West-West trade, is it not?

Mr. KLOSKE. In terms of affecting the dollar volume of our high technology industries, today that is entirely correct, Mr. Chairman.

Mr. WENDT. Mr. Chairman, may I add a point on that issue? We decided some time ago—in fact it was in the previous administration—that we needed to get the CoCom countries out of the West-West licensing business because it was a real drain on their resources and we launched an initiative in January 1988 to free up intra-CoCom trade and we've pursued that initiative and we are making real progress, as is clear from our written statement. I won't repeat it all.

Senator SARBANES. I'm informed that CoCom is now in the process of negotiating an agreement which would remove the licensing requirements for trade among CoCom members except for very high technology goods and that it's been estimated that the agreement could potentially delicense 85 percent of the goods currently traded in CoCom under licensing.

Mr. WENDT. Mr. Chairman, that is correct.

Mr. KLOSKE. With one observation, Mr. Chairman.

Senator SARBANES. Are you going to do that without getting the CoCom countries to put in higher enforcement standards with respect to the remaining——

Mr. WENDT. No, sir. The freeing up of intra-CoCom trade is linked to the implementation of what we call a common standard level of effective protection, getting all the countries up to the same effective level of enforcement, not only so that we're sure that the goods traded within CoCom aren't diverted outside of the CoCom community of nations but also to ensure fair conditions of competition. If some countries are enforcing the rules more than others, you do not have fair competition.

Senator SARBANES. Does that represent the administration's position?

Mr. WENDT. Yes, it does.

Senator SARBANES. That's a united position within the administration?

Mr. KLOSKE. I just have an extra nuance that I would just like to submit for the record.

I think in principle there is agreement with our CoCom allies that we need to reduce the burden on our respective companies in terms of dealing with intra-CoCom trade. The issue is to agree at the levels and the technologies. We are currently discussing with our various allies a common standard of security linked on exclusion lists. We have to be very careful that as the process of EC 1992 continues to pick up speed in Western Europe which will result basically in the creation of a license-free trading zone within that that we don't end up in a situation where we have our exclusion list and they have their exclusion list but they have differentiated levels of export enforcement and it becomes a free-for-all. The net results would be, one, less accountability in terms of export enforcement; and second, the imposition of massive unilateral controls to the United States companies across the board if we cannot agree on a common standard of security and exclusion lists. We still have some way to go on that.

Mr. HADLEY. I would say, Mr. Chairman, we do have some way to go, but it is clear that's where we all want to head. It's in everybody's interest. The West-West problem—which you're exactly right on, has the bulk of the trade. Without taking anything away from the right of U.S. exporters to have a level playing field with respect to West-East trade, and without taking anything away from the things that have been said here today on that subject, it is still true that the volume of trade we are talking about is relatively small. There are all kinds of views as to how attractive these markets will be.

Obviously, U.S. exporters have the right to try and go after them on a level playing field with their CoCom colleagues. But you're quite right, it is a relatively modest volume of the CoCom cases.

Senator SARBANES. At this point at least.

Mr. HADLEY. That's right.

Senator SARBANES. I want to ask a series of very quick questions. The 1988 trade bill made a number of changes in the Export Administration Act. I want to review them briefly and I want to put on the record the status of their implementation.

One, the elimination of unilateral controls. The trade bill amended the act and required any export control which is maintained unilaterally by the United States should expire 6 months after date of the enactment of the bill. Has this been implemented?

Mr. KLOSKE. Yes.

Senator SARBANES. The trade bill amended the EAA to eliminate controls for all goods and technology below what CoCom designates administration exception notice for AEN level except for those specific goods or technology on which CoCom retains notification requirements.

Has this been done?

Mr. WENDT. Yes, Mr. Chairman, it has. Sixty-six AEN items have been removed. The remaining ones were agreed in CoCom as still being justified.

Senator SARBANES. So the ones that have not been removed do not constitute items waiting for decision but the opposite decision has been made with respect to them. Is that correct?

Mr. WENDT. So far even those items are still being reviewed with a view to getting rid of them. This has to be done in CoCom in conjunction with our partners and that's consistent with what's in the trade bill.

Senator SARBANES. All right. But here's my question. You've got 99 items. How many of them have been reviewed, all 99, and the decision made was that 66 to take off the controls and to keep them on the other 33, or have the other 33 not yet been reviewed?

Mr. WENDT. The others have been reviewed. So far it has not been agreed in CoCom to remove them, but they are still under review. We have already removed 66 with the assent of our CoCom partners. That's been decided in CoCom and those 66 are gone.

Senator SARBANES. What about the other 33?

Mr. WENDT. CoCom is scheduled to review them. They are part of a continuous list review process.

Senator SARBANES. In other words, the review has not been completed.

Mr. WENDT. It has not been completed on the remainder.

Senator SARBANES. Why not?

Mr. WENDT. It's part of a regularly scheduled list review process. They can't do them all at once. One review was completed and it has been agreed that we will look at them again and I think there is a strong desire to get rid of them.

Senator SARBANES. Here you are, you're talking about decontrolling even further. You're having big discussions about that. You've got all these studies. You've got an April proposal and June meeting. And yet in the areas that are the AEN line, which is pretty low, you haven't even completed the items on that list.

Mr. **Wendt**. They have been reviewed once. They are being reviewed again. It's a continuous process in CoCom. Every year we review one-quarter of all the items that are controlled.

Senator **Sarbanes**. I think you used the expression at one point in your testimony this morning of getting ahead of the curve. Do I recall that correctly?

Mr. **Wendt**. Yes, sir, I did use that expression.

Senator **Sarbanes**. Well, I don't think it's happening here, if I may say so.

The trade bill amended the EAA to eliminate licenses for exports to CoCom countries which fall below the PRC greenline. Has this been done?

Mr. **Kloske**. Yes.

Senator **Sarbanes**. The trade bill amended the EAA to forbid the imposition of export controls on goods solely on the basis that the goods contain parts or components subject to export controls if such parts or components are essential to the functioning of the good or customarily included in the sale of the good in countries other than controlled countries and comprise less than 25 percent of the total value of the good.

Mr. **Kloske**. We expect to issue that next month, Mr. Chairman.

Senator **Sarbanes**. Why isn't that out yet? What's the problem? My understanding is there's not even a regulation yet on this issue.

Mr. **Kloske**. That's correct.

Senator **Sarbanes**. The trade bill was effective August 1988. This is March of 1990.

Mr. **Kloske**. That's correct, Mr. Chairman. What I just want to indicate, I've been advised by staff that the issues are complex and it will take time. Hopefully, we will resolve it in the next 4 weeks.

Senator **Sarbanes**. Well, the trade bill created a new category for making foreign availability determinations for trade between Western countries. In addition, the trade bill amended the EAA to set specific time frames for making foreign availability determinations and gave the Commerce Secretary authority to make the final foreign availability determination.

Has this been implemented?

Mr. **Kloske**. Yes, sir. We are acting within the time frames and in terms of West-West we haven't received any requests for assessments.

Senator **Sarbanes**. When were the regulations to implement this published?

Mr. **Kloske**. I am advised in the next 3 or 4 weeks the final regulation will come out.

Senator **Sarbanes**. So they're not out yet.

Mr. **Kloske**. The proposed rule has been out for comment since November.

Senator **Sarbanes**. But we don't have the final yet, is that correct?

Mr. **Kloske**. The provisions have been implemented and we expect to have the final rule on the street in the next 3 or 4 weeks. But the time lines are being respected, Mr. Chairman. I want to make that clear for the record.

Senator **Sarbanes**. Well, we are trying to move ahead. We haven't fully done what was to be done and there was a general agreement for which we passed the piece of legislation. For whatever it's worth it could be some of the problems that the industry has faced, but I understand the larger share of their problems lies in the things they want to have done.

Mr. **Kloske**. I personally am not happy as to the level of progress that we have made. Some of the issues are more complex than we thought they would be, but perhaps I'm being overoptimistic. I would tend to see the glass as half-full rather than half-empty.

In terms of the major regulations that are still before us, we will make final progress on the supercomputers and medical equipment hopefully by the end of springtime.

Mr. Chairman, with your permission, I'd like to submit for the record the current status as to where the regulations stand.

Senator **Sarbanes**. That would be very helpful. We would appreciate that.

Mr. Secretary, I know you took office when, in the beginning of October?

Mr. **Kloske**. September 13, sir.

Senator **Sarbanes**. Obviously we will need to come back and revisit these issues.

Does the State Department head the U.S. delegation to CoCom?

Mr. **Wendt**. Yes, sir, we do.

Senator **Sarbanes**. Who makes up the U.S. delegation to CoCom?

Mr. **Wendt**. It depends on the meeting. We have meetings at all different levels. There are regular Tuesday meetings in CoCom in Paris that are headed by the head of our delegation permanently assigned there. In a rather unusual departure from the pattern, in January 1988 at what we call a senior political meeting of CoCom countries at Versailles, the head of the delegation was the Deputy Secretary of State. But it really depends on the purpose of the meeting at what level it's headed.

Senator **Sarbanes**. And does the U.S. delegation at CoCom, is that composed of people from the State Department?

Mr. **Wendt**. Generally, yes, it is.

Senator **Sarbanes**. When you say generally——

Mr. **Wendt**. Well, at the moment there is a military adviser there who has certain responsibilities most of which fall outside of the regular CoCom framework.

Senator **Sarbanes**. You mean there's a representative of the Defense Department who's part of the CoCom delegation?

Mr. **Wendt**. He is a military adviser to the CoCom delegation and he deals with certain issues. It's called STEM. It's an exercise that was set up several years ago. It involves primarily people in the defense arena and its purpose is to identify certain particular militarily sensitive technologies.

Senator **Sarbanes**. How many agencies constitute the interagency task force that we talked about earlier that work on this issue?

Mr. **Wendt**. State, Commerce, and Defense, most of the time; the Department of Energy, National Security Council, staff.

Senator **Sarbanes**. The permanent Departments are State, Commerce and Defense. Is that correct?

Mr. **Wendt**. Yes, sir.

Senator **Sarbanes**. Why at the CoCom meetings which the State Department chairs, if you're going to have a representative from

Defense, which is one of the member Departments in the interagency group, do you not also have someone from Commerce?

Mr. WENDT. At the moment, Mr. Chairman, we think that the representation we have on our delegation in CoCom is adequate for the workload we face there and the fact that someone is from a particular agency does not mean that that person is simply representing an agency point of view. That person is representing the U.S. Government and employees of the Department of State assigned overseas are called upon to represent an administration position.

Senator SARBANES. Why do you have the Defense Department person there?

Mr. WENDT. As I explained, Senator, that adviser was put there for a particular and narrowly defined purpose. That adviser does not attend the regular Tuesday CoCom meetings. He has a rather narrow function and the ability of an individual to represent U.S. Government policy really is not determined by what agency he may happen to work for.

Senator SARBANES. But the way this thing is structured, the Commerce Department by its very nature hears consistently from the exporters and it's concerned about the economic impacts. The Defense Department has a different concern. Both need to be heard. And then someone has to reach a decision in a sense as between them.

Now if you set up an important forum somewhere in which there's some sense that both points of view don't have a chance to have an input, you may well have created a tilted situation.

Mr. WENDT. Mr. Chairman, I really think in reality we have not created a tilted situation because the decisions are made in Washington in the interagency process and the delegation is instructed to carry them out.

The Department of Commerce is represented at all list review meetings that take place in Paris. People are sent over from Washington for that purpose. On the regular delegations, the Department of Defense has no representation.

Senator SARBANES. Who constitutes the delegation of the other CoCom countries?

Mr. WENDT. It varies greatly from country to country. In many cases it's foreign ministries. In some cases it may be economics ministries. Some of them rely—I think even have representatives from their defense ministries. It's hard to generalize.

Senator SARBANES. You mean the delegation from some countries would include the defense ministry or would be the defense ministry?

Mr. WENDT. Well, generally it would include representatives of defense ministries.

Senator SARBANES. What about the economics ministries? Do all countries include the economics ministries in their delegation?

Mr. WENDT. Yes, they would, and so do we. But as I said, the key decisions really are made in Washington in the interagency process and every major delegation going from Washington to a CoCom meeting consists of representatives from the principal agencies and certainly all three that you see before you this morning. So there is no lack of opportunity for all delegations to make their voice heard.

Senator SARBANES. You mean the Commerce Department is part of the CoCom delegation?

Mr. WENDT. They don't have a representative permanently stationed in Paris, but they——

Senator SARBANES. All right. Do other countries in their delegation at Paris, who constitutes their delegations, the other CoCom countries?

Mr. WENDT. I think in most cases their permanent delegations come from their foreign ministries. That's the pattern.

Senator SARBANES. Do they include the economics ministries?

Mr. WENDT. Not necessarily, no.

Senator SARBANES. Do you know?

Mr. WENDT. I would have to find out. There are 16 other countries in CoCom.

Senator SARBANES. Some of those countries, I take it from what you said, that their permanent delegation in fact is not the foreign ministry but is the economic ministry. Is that correct?

Mr. WENDT. I think in most cases, no, it is the foreign ministry.

Senator SARBANES. But is it in some cases the economics ministry?

Mr. WENDT. I would have to check.

Senator SARBANES. Did I mishear you before when you said that? I thought I understood you to say that before.

Mr. WENDT. I think there may be some whose permanent representatives come from economics ministries, but I can't state that for sure. I would have to check. I do think in most cases it's the foreign ministries, but I would submit that every Government organizes itself in the way it sees fit and we would not necessarily be guided by what other governments do. As long as it's possible for all of the major agencies to have full participation and full input into the policy-making process, I think the U.S. national interest is served.

Senator SARBANES. Well, why don't you submit for the record the composition of the delegations of the other CoCom countries at the Paris talks, the permanent delegation they have there.

Mr. WENDT. I will be happy to do that, Mr. Chairman.

Senator SARBANES. It will be interesting to see. Obviously, we're not necessarily bound or we don't necessarily have to do what they do, but it might be interesting if they do it differently than we do.

Mr. WENDT. I will be happy to submit that information for the record.

Senator SARBANES. Could someone review for me—perhaps you should do it, Ambassador Wendt—the schedule that you now see evolving here as the administration tries to deal with this problem. I want to know what the reference points are.

Mr. WENDT. The strategic assessments we have been talking about are due to be completed by the end of this month. By the end of April, according to the timetable we are following, we should have ready our comprehensive proposals to submit to CoCom. In the meantime, working groups in CoCom are dealing with the priority areas of telecommunications, computers and machine tools. They are expected to complete their work by the end of May. In early June, a CoCom high-level meeting is scheduled at which all of this work will be brought together and decisions will be made.

So it is on a fast track. End of March, completion of the strategic assessments; end of April, U.S. proposals ready for submission to CoCom; end of May, working groups in CoCom complete their work; high-level meeting in early June.

Senator SARBANES. Does either of the other two witnesses wish to add anything?

Mr. KLOSKE. As I mentioned earlier, Mr. Chairman, it all depends what the content of the NSR is. If the Joint Chiefs of Staff, which is an organization I have had some dealings with, decides that the threat is still there in major proportions, whether it's under the guise of a Bolshevik regime or a new nationalistic regime, then we're going to have to think through what the levels of rationalization and streamlining are going to be. As Ambassador Wendt said, I think it's hazardous at this stage to predict what that NSR is going to say.

Senator SARBANES. But you're going to the degree of substance, the meat that was asked and how much meat is there going to be in the proposal. In terms of a timetable or process, I take it this is the process. Is that correct?

Mr. KLOSKE. This is part of the process, but the thickness of the sandwich will be dependent on the recommendations that are made by the NSR. It could be a thin sandwich.

Senator SARBANES. We understand that. Mr. Hadley, did you want to add anything?

Mr. HADLEY. That is the correct schedule, Mr. Chairman.

Senator SARBANES. What about these questions I asked about the implementation of the 1988 act, those things that have not been done?

Mr. KLOSKE. Well, as far as I'm concerned, we have to deal with most of them on a technical basis and we hope to have most of them out for final comment by springtime.

Senator SARBANES. By March 21?

Mr. KLOSKE. I would say later springtime rather than earlier springtime.

Senator SARBANES. Well, obviously you've got a lot of authority under this act and how you exercise it is going to impact on the position we have to take toward this issue.

Did CoCom do those AEN line matters?

Mr. WENDT. Those items are all scheduled to be reviewed again in the very near future.

Senator SARBANES. What do you mean by the very near future?

Mr. WENDT. Well, I think within the next few months as part of the continuing streamlining process. In the meantime, they are doing other things to which greater priority is attached, like the working groups on machine tools, telecommunications and computers. I don't think the other issues are being neglected though.

Senator SARBANES. Gentlemen, thank you very much. The hearing is adjourned.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

WEDNESDAY, MARCH 28, 1990

U.S. SENATE, COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, SUBCOMMITTEE ON INTERNATIONAL FINANCE AND MONETARY POLICY,

Washington, DC.

The subcommittee met at 10 a.m., in room SD-538, Dirksen Senate Office Building, Senator Paul S. Sarbanes (chairman of the subcommittee) presiding.

Present: Senators Sarbanes, Riegle, Dixon, Shelby, Graham, Kerrey, Garn, Heinz, Gramm, Bond, and Mack.

OPENING STATEMENT OF SENATOR SARBANES

Senator SARBANES. The subcommittee will come to order.

This morning the Subcommittee on International Finance and Monetary Policy holds the second in a series of hearings to consider the reauthorization of the Export Administration Act.

This morning we are going to be privileged to hear the views of former government officials and representatives of leading industry groups.

Earlier in the month, on March 7 to be specific, the subcommittee held a hearing with officials from the Departments of Commerce, State, and Defense to review the administration's views on the reauthorization of the Export Administration Act which expires on September 30 of this year.

At that hearing, administration witnesses testified that by the end of this month the Joint Chiefs of Staff would complete a national security review to assess the potential impact of increased technology transfers on Warsaw Pact military capabilities and that the intelligence community would complete a study to evaluate the extent of illegal acquisition of Western technology by East European countries.

Based on these reviews, the administration will determine what further changes in restrictions on high technology exports to that area of the world are appropriate in terms of assisting development of Eastern European economies and balancing that development with the need to protect U.S. national security interests.

Administration witnesses testified at that hearing that comprehensive proposals on export control policy would be presented to the President by the end of April. These proposals would serve as the basis for the U.S. position in CoCom negotiations to take place in May in preparation for a high level meeting of CoCom now scheduled for early June.

The subcommittee hopes to have the administration proposals available to it, and in fact the administration's clear position, before taking up the reauthorization of the Export Administration Act.

It became very clear in the March 7 hearing the existing Export Administration Act in fact gives the administration very broad authority to revise U.S. export control policy. While the Export Control Act authorizes the administration to impose controls, it does not require it. In fact, under the terms of the act, the administration could move to revise in a minor or major way the existing control regime.

This morning we are privileged to have a distinguished panel before us. I have chosen to put them all at the table at the same time because I think once we get their statements that will give us a better opportunity for an exchange with the members of the committee and amongst the members of the panel.

Our witnesses this morning include Paul Freedenberg, currently trade consultant for the law firm of Baker and Botts of Washington, and formerly Under Secretary of Commerce for Export Administration; Richard Perle, currently resident fellow at the American Enterprise Institute and formerly Assistant Secretary of Defense for International Security Policy; Charles Hough, director of trade administration for Honeywell, will be speaking on behalf of the National Association of Manufacturers; Bill Burck, the assistant general counsel of International Data General, who will be speaking on behalf of the American Electronics Association; and Mark Ryan, senior attorney for export licensing for Hewlett-Packard, who will be speaking on behalf of the Computer and Business Equipment Manufacturers Association.

Gentlemen, we are pleased to have you here. Before we turn to the panel, I will turn to my colleagues for any opening statements they may wish to make.

Senator Gramm.

OPENING STATEMENT OF SENATOR GRAMM

Senator GRAMM. Thank you, Mr. Chairman.

I want to thank the panel for being here today. Our whole export control system has played a role in perestroika by denying the Soviet Union valuable technology that an oppressive society could not generate.

We always face a delicate balance. On one hand we need to prevent the transfer, to potential adversaries, of technology that can be applied for military purposes. On the other hand, we need to be careful not to limit our ability to compete in the world market where sophisticated electronic equipment can be bought at Radio Shack.

By and large, I think there's always room to complain about our effort in the past, but I think one has difficulty in complaining with what is happening in the world. I think it is important that we try to improve the system, that we try to open the way for more exports of American products that embody American technology.

I think at the same time, we have to be aware of the fact that events in Lithuania have called into question just how tame the Soviet bear actually is. In terms of exports to the Eastern bloc countries we now face a very real question, and that question is, to what extent are they now independent players?

I want to do everything we can to promote their economic development. On the other hand, I think we have to look at whether or not technology that we allow to be transferred ends up in Soviet hands.

Those are all very difficult questions to answer, and we therefore have called on the experts this morning to give us the benefit of their advice and knowledge.

Mr. Chairman, I'd like to thank you for holding the hearing.

Senator **Sarbanes**. Very good. Senator Shelby.

Senator **Shelby**. Thank you, Mr. Chairman.

I have followed the problems from this committee and as a Member of the Senate dealing with CoCom and I know that we have a different atmosphere there, but I believe it's also a dangerous atmosphere. The thaw is there, but should we just rush in pell-mell and knock all the barriers down? I'd like to hear some of the testimony this morning and then I have some questions for the record.

Senator **Sarbanes**. Senator Bond.

OPENING STATEMENT OF SENATOR BOND

Senator **Bond**. Thank you very much, Mr. Chairman.

I am very much impressed with the panel we have before us today to share their views on the Export Administration Act and I certainly look forward to hearing their comments because I think we all would agree that changes are needed in our control system. There are probably no people more qualified to tell us what those changes should be than those who are out in the field trying to sell American high technology products overseas.

The phenomenal changes in Eastern Europe have highlighted and intensified the need to reform our control system, but the need existed even before the situation in that part of the world began changing. This year's reauthorization provides us with an opportunity to give American companies the tools they need to remain competitive in the world market.

Though it's critical we not ignore our very real national security interests in protecting certain technologies, it's also important I believe that we not miss the chance to improve our control regime so that it not only ensures the United States remains the world's greatest military power but its greatest economic power as well.

We are going to have to address some tough issues this year—the need to respond to changes in Eastern Europe, the need to deal with the fact that because of EC 1992 we are facing a license-free zone within CoCom, whether we like it or not, and the need to take bold steps within CoCom to keep it intact, to keep our allies from abandoning it completely, to keep the whole system from imploding.

The other issue, of course, that we ought to discuss is where the ultimate authority for licensing commercial and dual use items should rest. Currently, a number of agencies are involved within the administration. Any one can stop it. I am coming to the view that perhaps we should give the Department of Commerce the decisive role and I'm sure there will be some discussion of that and I look forward to either hearing comments on that or covering it in the question and answer session.

Thank you very much, Mr. Chairman.

Senator **SARBANES**. Senator Dixon.

Senator **DIXON**. Thank you, Mr. Chairman.

I am pleased to be here this morning as the International Finance Subcommittee conducts its second day of hearings on reauthorization of the Export Administration Act.

Mr. Chairman, I think we need to make at least three major reforms.

First, we need to cut the control list. I think we can significantly shorten the list of controlled items to both the Soviet Union and Eastern Europe without endangering our national security. Perhaps we should be more liberal with Eastern Europe than we are with the Soviets, but we should act.

While there are many new economic opportunities for U.S. firms in the bloc, that's not the main reason why action is required. The real reason is that reducing controls to the Eastern bloc will make it easier for our companies to make sales to Free world countries.

We also need to improve our policy coordination and control process. Frankly, we need to put someone more fully in charge. The administration seems to be in disarray and if we're not careful we will inadvertently wreck CoCom, which would be very harmful to our national security.

Finally, Mr. Chairman, we need to better coordinate with our CoCom allies to establish a common enforcement framework. As it stands at the moment, the U.S. enforces controls more strictly than our CoCom partners and the result is that U.S. firms are disadvantaged in international competition both in sales to the Eastern bloc and to the free world.

Mr. Chairman, I ask that the balance of my remarks be placed in the record.

Senator **SARBANES**. They will be so included.

Senator Mack.

Senator **MACK**. Thank you, Mr. Chairman.

I, too, look forward to the testimony of the panel. While I have not drawn any final conclusions as to where I think the line ought to be drawn, I must say that I do have some concerns.

There is no question that we need to come up with the proper balance, but from our hearing a couple weeks ago I think there was enough information to raise concern from my perspective about where that line should be drawn.

So I look forward to your testimony and I have some questions that I will raise at the appropriate time.

Senator **SARBANES**. Senator Garn.

OPENING STATEMENT OF SENATOR GARN

Senator **Garn**. Thank you very much, Mr. Chairman.

As Richard Perle came up to say hello, he said something about, "Well, here we are again." And that "here we are again" started about 15 years ago when I was a brand new freshman Senator, the most junior member of this committee, sitting down at the last seat. I sat in on a hearing on export administration and listened to the problems of CoCon and the infighting with the various Federal agencies. Unfortunately, not much has changed over those 15 years, I hate to report.

When Paul Freedenberg used to work for me and the committee, we decided to create the Office of Strategic Trade. All that resulted from that legislation was the creation of an Under Secretary. That was the crumb the administration threw me at that time—not that Paul's job was a crumb, but——

Senator **Sarbanes**. And certainly not that Paul is a crumb.

Senator **Garn**. Absolutely not. That was all that was left of my original legislation. John Heinz and I spent 7 months in conference with the House on the last reauthorization of EAA. When you're having fun, time passes rapidly.

But I can remember making a speech more than a decade ago that I had come to the conclusion that there was simply no way that you could possibly, possibly solve this problem by tinkering with it piecemeal. And I want to say at the outset that I am more convinced of that than ever. We need a complete structural reform. To paraphrase, I said that Defense would decide that rubber on the end of a pencil, an eraser, was of strategic importance and not want to sell it. On the other hand, Commerce would sell anything because that was their job. And foreign policy controls, the State Department didn't know what the hell they were doing and never had.

There was simply no way that you could possibly ever resolve these biases by tinkering with the system or making minor changes because those biases existed then and they do today.

So I am more convinced than ever that the updated version of the Office of Strategic Trade and Technology raised to White House level is the only way we are going to resolve this. If we renew EAA with the usual change here and change there, I don't think you are going to overcome the biases. I don't think we will solve the problems industry has with the ridiculously long list of prohibitions and I think we will continue to have leakage.

So, Mr. Chairman, I do appreciate you holding these hearings. These hearings on reauthorization of EAA come at an unprecedented time, with unprecedented challenges for our export control policy in the face of the incredibly rapid changes in the Soviet bloc. We are simply no longer certain what national security means as it applies to export controls.

In the midst of this uncertainty, the United States has pledged to streamline the CoCom list, to reduce controls for Eastern Europe, to plot a course toward an effective and an license-free CoCom. Now what are our chances of doing this sensibly? I don't think it would come as a surprise to anyone that I frankly don't think they are very good, not on the basis of 15 years of dealing with these issues.

The basic reason is that we have given a technical and a highly specialized mission to a committee of mid-level bureaucrats from three warring cabinet agencies. No one is in charge. The policy gets no consistent high-level attention and the technical details dominate the policy debate. I believe the solution lies, as I've mentioned talking about the history of this debate, in complete structural reform of the system, a point on which I am hearing increasing agreement.

The industry wish list that is being presented to us today includes every structural and procedural element of the Office of Strategic Trade. I welcome industry's support after a long period when we have not seen eye-to-eye. We have one minor disagreement over whether Commerce or a new White House agency should take on the mission. I simply do not believe that Commerce has the military credentials to make the close calls on critical technologies or would be able to remove their bias. They also have a very natural conflict between their trade promotion mission and export controls.

Finally, I believe these issues require the high-level attention that a White House location would provide. So now that we have agreed on the main elements of an OSTT, I look forward to working out the final issue of placement of the agency in the months to come.

Thank you, Mr. Chairman.

Senator **Sarbanes**. Thank you very much, Senator Garn.

Gentlemen, we are prepared to hear from you. I think, Mr. Freedenberg, we will start with you and move right straight across the panel.

STATEMENT OF PAUL FREEDENBERG, INTERNATIONAL TRADE CONSULTANT, BAKER AND BOTTS, FORMER UNDER SECRETARY OF COMMERCE FOR EXPORT ADMINISTRATION

Mr. **Freedenberg**. Thank you.

Mr. Chairman and members of the subcommittee: I apologize. I have a touch of laryngitis but I'll push on.

I appreciate the opportunity to testify before you today on the subject of national security export controls on Eastern Europe and the Soviet Union. Two months ago I used the term "East Bloc" when I testified before the House Foreign Affairs Committee. That term is no longer descriptive of the power structure in that part of the world. I would like to begin with a discussion of CoCom, the Coordinating Committee for Multilateral Export Controls, discussing the effect of United States export policy on the Soviet Union. I would then like to consider the dramatically changing environment for export controls, concluding with policy recommendations for coping with the new world situation and with the renewal of the Export Administration Act.

As I have testified earlier this year, I would argue that the United States' technology transfer policy over the past 40 years has proven to be a great success. The international effort known as CoCom, in concert with the policy of containment, has brought the

Soviet leadership to the realization that they cannot compete with the United States and its allies either militarily or economically and that the costs of empire are simply too great to bear. That realization has in turn provided the motivation for perestroika, as Senator Gramm noted, or restructuring of the Soviet economy and the political structure. Of course, a few high technology products have gotten through the CoCom embargo. But when one considers the magnitude of the endeavor, it is remarkable that we have had such a high level of cooperation from our allies.

The proof of CoCom's success can be found in today's Soviet Union. Certainly, it is first and foremost a failure of Soviet-style communism, but CoCom has meant that they have been unable to substitute Western technology for their own failings.

Recent intelligence estimates put the Soviets a decade behind in computers and semiconductor production. They are still having trouble getting good yields out of their 64K DRAM, a standard memory chip in the West for the last 9 years, while the United States and Japan are developing the 16 megabit DRAM. While IBM and Cray supercomputers can run for 10,000 hours between maintenance, Soviet scientists consider 100 hours of trouble-free performance out of any mainframe computer to be an accomplishment. Moreover, while the Soviets are able to produce one-of-a-kind "boutique" computers for their space program, they are simply incapable of mass production in this area. There are approximately 40 million computers in the United States, or 1 for every 7 people. In the Soviet Union, the number is just 300,000—1 for every 900 people. This in a planned economy, which, if anything, needs computers more than a free market economy. Similar gaps exist in most basic areas of modern technology: machine tools, scientific instruments, telecommunications.

The past year has been one of breathtaking change in the East. It would have been difficult for any international organization to keep up with that pace of change, but thus far CoCom policy has been remarkably unresponsive. There has been rhetoric but no concrete results. I would argue that unless U.S. leadership turns CoCom in a dramatic new direction in 1990, the institution is in danger of disintegrating. The U.S. Government cannot afford to rest on its laurels. It must help to adapt CoCom to the dramatically new international environment.

Over the past year there have been signs of trouble for the United States as a result of its conservative policy. The Japanese Government, with memories of Toshiba fresh in its mind and with still unresolved territorial claims against the Soviet Union over the Northern Islands, has not been critical of United States policy. But Prime Minister Margaret Thatcher publicly disagreed with United States objections about the Simon Carves machine tool controller project in Armenia, early in 1989, and told the U.S. Government to stay out of the issue, since the British authorities had already decided the project met CoCom standards—hardly a gesture of unity from one of our closest allies. Even more ominous, a resolution calling for West German withdrawal from CoCom participation in everything but the munitions list was introduced in the Bundestag by the opposition Social Democrats on December 15, 1989. It was defeated on a straight party vote, but, judging by their public statements, Chancellor Kohl and Foreign Minister Genscher are themselves committed to a radical shortening of the CoCom list, and they are unlikely to be able to defeat future resolutions of this sort if the U.S. Government persists in a conservative, no-change approach in CoCom. The lure of lucrative projects in Eastern Europe and in the Soviet Union, which has been a traditional market for West Germany, will simply be too strong to resist. I might add that the Social Democrats had another call for noncooperation with CoCom just last week.

In an era when Mikhail Gorbachev is one of the most popular figures in almost every CoCom country's national poll; in an era when the leader of the Soviet Union seems to have pushed out dictators and promoted democratization in Eastern Europe; in an era when the chief spokesman for the Soviet Union, Gennady Gerasimov, declares that the "Brezhnev Doctrine" has been replaced by the "Sinatra Doctrine," so that each East European country could say, "I did it my way;" in such an era, CoCom must change rapidly or it very well could be pulled apart by its constituent countries.

That is why I applauded the administration's CoCom initiative announced in January. Since few details have been revealed, and since it is highly dependent on the strategic reviews currently underway by the Joint Chiefs and the intelligence agencies, it would be difficult to predict its chances for success in responding to European demands. I would, nonetheless, make the following observation. The proposed end-user checks and on-site verifications make sense to the U.S. Government, since it has a large export control bureaucracy. The Europeans and Japanese, however, have much smaller bureaucracies and are likely to resist United States requests for significant enlargement of those bureaucracies during a time of lessening East-West tension. Furthermore, our European allies reject the idea that we can differentiate one Eastern European regime from another, or that we are capable of preventing the diversion of technology to the Soviet Union once it is in Eastern European hands.

It is my understanding that our European allies would prefer that we simplify the CoCom process rather than make it more complicated with new control regimes that differentiate Eastern Europe from the Soviet Union and, perhaps, even differentiate some Eastern European countries from others within that region. I recognize that these proposals have been made in good faith after long and serious consideration, but I fear that time may not be on the side of the United States in negotiating the details of this complex proposal.

The West should be able to see a significant peace dividend from reduced arms expenditures, but that will not mean that it will be in the interest of the Western Alliance to suddenly remove all controls on technology transfer and provide the Soviets with the technological tools to upgrade the accuracy of their missiles and the quality of their weapons systems.

What should happen over the next few years is a significant increase of sales of products that can increase the standard of living of the average Soviet citizen. The United States does have an interest in seeing perestroika and glasnost succeed, and it can provide tangible examples of success to the Soviet people. The machine tool list needs to be updated after a virtual freeze for 16 years. Unfortunately, despite more than a year of negotiations, the results thus far have been disappointing, with little that the U.S. machine tool industry still manufactures proposed for decontrol. Finished computers for civilian projects in banking, oil production, medical products, and consumer goods modernization can also be provided. So too should technology for oil and gas production efficiency and energy conservation be provided. The Soviet oil and gas fields are either mature and close to depletion or in harsh environments. Hence, there is an enormous amount that the U.S. oil and gas equipment industry can do to enhance exploration and recovery. As one of the few hard currency earners available to the Soviets, enhanced oil and gas production may well be the key to financing perestroika in other parts of the economy.

Let me go on to my conclusions since my time is near an end. I make recommendations that we bring the "Third Country Initiative" up to date by adding Taiwan and Brazil, who are still outside of that initiative. That is, they are not cooperating with CoCom as other noncommunist CoCom countries are.

I have also argued—and I think it's very important—I begin with the premise that CoCom is a success, but I would say that we need to radically shorten the embargo list and concentrate it on technologies of compelling military importance, such as computer and semiconductor manufacturing capability in order to keep the Europeans and the Japanese on board.

In the absence of such a radical shortening, I fear that we will see them begin to make up their own embargo lists within the next year. In such an eventuality, CoCom would continue to exist. It would, however, become increasingly irrelevant.

Finally, let me talk about the subject which Senator Garn discussed. I'd like to make the following point. The Bureau of Export Administration was created by the Export Administration Amendments Act of 1985. I was honored to be named as the first Under Secretary of Commerce for Export Administration. I think most observers would agree that BXA is now an effective and well-run organization, with a fine staff of more than 500 people. It has become a model for our allies' licensing and enforcement organizations. Indeed, it is the only U.S. Government agency to which MITI, the Japanese Ministry of Trade and Industry, sends people to be trained.

Although there are few complaints about day-to-day license processing, which is done with accuracy and speed, there are still complaints about the time it takes for decisions on precedent-setting cases, for decisions on foreign availability cases, and for CoCom list review and revision. I would argue that as long as there is redundancy, as long as there are two agencies responsible for the very same job, you should expect delay and protracted debate. Regulatory redundancy is a formula for delay and debate even about policies that the Congress clearly mandated. I would further argue that either you in the Congress believe that the BXA can do the regulatory job assigned to it, or you should turn that job over to the Defense Department.

A more radical solution to the problem would be to create an independent Office of Strategic Trade and Technology, as Senators

Garn and Heinz have suggested. That certainly would get rid of what Senator Heinz calls the "three-headed monster" that currently makes policy, and it would provide the U.S. exporter with certainty about policy and licensing decisions, both dual use and munitions. Having been both in the bureaucracy and the Senate Committee staff, however, I have difficulty envisioning three such powerful bureaucracies ceding power to the proposed new agency.

If the proposed OSTT does not turn out to be the committee's policy preference, a streamlining of the bureaucratic structure of export controls is in order. Such a streamlining should include a clarification of the primacy of the Secretary of Commerce in carrying out the mandate of Congress and a radical staff reduction in redundant export control bureaucracies. This should be done in the name of good government and policy clarity. Otherwise, there is the continuing danger that whatever reforms of the export administration process you enact this year will be undermined by the bureaucratic uncertainty and interagency warfare that has sabotaged earlier reform efforts.

Thank you, Mr. Chairman.

[The complete prepared statement of Paul Freedenberg follows.]

Prepared Statement of Paul Freedenberg

International Trade Consultant

Baker & Botts

Subcommittee on International Finance and Monetary Policy
Committee on Banking and Urban Affairs
United States Senate
Washington, D.C.

March 28, 1990

Mr. Chairman and members of the Subcommittee:

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As I have testified earlier this year, I would argue that United States' technology transfer policy over the past 40 years has proven to be a great success. The international effort known as COCOM, in concert with the policy of containment, has brought the Soviet leadership to the realization that they cannot compete with the United States and its allies either militarily or economically and that the costs of empire are simply too great to bear. That realization has in turn provided the motivation for ***perestroika***, or restructuring of the Soviet economy and the political structure. Of course, a few high technology products have gotten through the COCOM embargo. But when one considers the magnitude of the endeavor, it is remarkable that we have had such a high level of cooperation from our allies.

The proof of COCOM's success can be found in today's Soviet Union. Certainly, it is first and foremost a failure of Soviet-style communism, but COCOM has meant that they have been unable to substitute Western technology for their own failings.

Recent intelligence estimates put the Soviets a decade behind in computers and semiconductor production. They are still having trouble getting good yields out of their 64K DRAM, a standard memory chip in the West for the last nine years, while the U.S. and Japan are developing the 16 megabit DRAM. While IBM and Cray super-computers can run for 10,000 hours between maintenance, Soviet scientists consider 100 hours of trouble-free performance out of any mainframe computer to be an accomplishment. Moreover, while the Soviets are able to produce one-of-a-kind "boutique" computers for their space program, they are simply incapable of mass production in this area. There are approximately 40 million computers in the United States, or one for every seven people. In the Soviet Union the number is just 300,000--one for every 900 people. This in a planned economy, which, if anything, needs computers more than a free market economy. Similar gaps exist in most basic areas of modern technology: machine tools, scientific instruments, telecommunications.

The Reagan Administration policy was to oppose all joint ventures and turn-key projects that taught the Soviets anything about Western manufacturing techniques. The policy of "no-exceptions" to the COCOM list meant that nothing of any sophistication could be transferred by the other COCOM members. Moreover, the "general technology" note of the COCOM list provided that the technology for manufacturing micro-electronics needed a general exception vote by COCOM even if the technology was related to the section of the COCOM list that was left to national discretion if it involved a product sale. Thus, there was virtually a total embargo on the transfer of micro-electronic technology throughout the 1980s.

The past year has been one of breath-taking change in the East. It would have been difficult for any international organization to keep up with that pace of change, but thus far COCOM policy has been remarkably unresponsive. There has been rhetoric but no concrete results. I believe that unless U.S. leadership turns COCOM in a dramatic new direction in 1990, the institution is in danger of disintegrating. The United States Government cannot afford to rest on its laurels. It must help to adapt COCOM to the dramatically new international environment.

On May 29, 1989, in response to the Soviet withdrawal from Afghanistan, President Bush declared the end to the "no exceptions" policy in COCOM. A month later Secretary of Commerce Robert Mosbacher made a finding of "foreign availability" for the IBM-AT level, 80286 micro-processor driven micro-computer, raising the decontrol level for micro-computers from 6.5 million bits per second to 69 million bits per second. Despite concerns raised publicly by Secretary of Defense Richard Cheney, this seemed to indicate the beginning of an innovative new policy by the Bush Administration.

Unfortunately, the rest of the year was a disappointment. Comments were made by Secretary Mosbacher about the U.S. willingness of treat Hungary and Poland better than the Soviet Union and the rest of Eastern Europe, but no concrete plan was laid out. Indeed, at the high level meeting of COCOM, the United States distinguished itself as a minority of one against 16 to oppose change, and it was particularly against revising the machine tool list, which had not seen revision since it was adopted in 1974.

Over the past year there have been signs of trouble for the United States as a result of its conservative policy. The Japanese Government, with memories of Toshiba fresh in its mind and with still unresolved territorial claims against the Soviet Union over the Northern Islands, has not been critical of U.S. policy. But Prime Minister Margaret Thatcher publicly disagreed with U.S. objections about the Simon Carves machine tool controller project in Armenia, early in 1989, and told the U.S. Government to stay out of the issue, since the British authorities had already decided the project met COCOM standards -- hardly a gesture of unity from one of our closest allies. Even more ominous, a resolution calling for West German withdrawal from COCOM participation in everything but the Munitions List was introduced in the Bundestag by the opposition Soviet Democrats on December 15, 1989. It was defeated on a straight party vote, but, judging by their public statements, Chancellor Kohl and Foreign Minister Genscher are themselves committed to a radical shortening of the COCOM list, and they are unlikely to be able to defeat future resolutions of this sort if the U.S. Government persists in a conservative, no-change approach in COCOM. The lure of lucrative projects in Eastern Europe and, indeed, in the Soviet Union, which has been a traditional market for West Germany, will simply be too strong to resist.

In an era when Mikhail Gorbachev is one of the most popular figures in almost every COCOM country's national poll; in an era when the leader of the Soviet Union seems to have pushed out dictators and promoted democratization in Eastern Europe; in an era when the chief spokesman for the Soviet Union, Gennady Gerasimov, declares that the "Brezhnev Doctrine" has been replaced by the "Sinatra Doctrine," so that each East European country could say, "I did it my way;" in such an era, COCOM must change rapidly or it very well could be pulled apart by its constituent countries.

That is why I applauded the Administration's COCOM initiative announced in January. Since few details have been revealed, and since it is highly dependent on the strategic reviews currently under way by the Joint Chiefs and the intelligence agencies, it would be difficult to predict its chances for success in responding to European demands. I would, nonetheless, make the following observation. The proposed end-user checks and on-site verifications make sense to the United States Government, since it has a large export control bureaucracy. The Europeans and Japanese, however, have much small bureaucracies and are likely to resist U.S. requests for significant enlargements of those bureaucracies during at time of lessening East-West tensions. Furthermore, our European allies reject the idea that we can differentiate one Eastern European regime from another, or that we are capable of preventing the diversion of technology to the Soviet Union, once it is in Eastern European hands.

It is my understanding that our European allies would prefer that we simplify the COCOM process rather than make it more complicated with new control regimes that differentiate Eastern Europe from the Soviet Union and, perhaps, even differentiate some Eastern European countries from others within that region. I recognize that these proposals have been made in good faith after long and serious consideration, but I fear that time may not be on the side of the United States in negotiating the details of this complex proposal.

The major factor that has diminished the pressure on COCOM over the past year has been the economic confusion and lack of direction in the Soviet Union itself. The Soviets do not have a great deal of hard currency to spend. Their general approach has been to propose joint ventures, with the pay-back for the project being the sale of the product of the JV in the West. This makes economic sense with energy and chemicals, which are readily marketable, but is much less appealing with any kind of consumer goods, or light industrial products, which are likely to be of questionable quality and unavailable for sale in less than five years. Although their $30 to $40 billion debt to Western banks is the easiest to service in all of Eastern Europe, and their credit rating is high, the Soviet Government has been very conservative about incurring new debt. They seem to be worried about giving Western banks and governments economic leverage over them, although the history of Latin debt collection in the 1980s should not provide the basis for such fears.

Significant U.S. joint ventures that have gotten off the drawing board in the Soviet Union amount to a mere few dozen, and -- due to COCOM restraints -- none have been in what could be called the high technology sector. Japanese companies have shown little more interest with 20 JVs, including a noodle shop at the Moscow Airport. By contrast, the FRG has been the most active with more than 100 JVs. But the results have been disappointing, and the major role of the FRG thus far has been encouragement and support for President Gorbachev and his *perestroika* program. Italy is the only other JV partner of any significance.

CONCLUSION AND RECOMMENDATIONS

As I have argued, the COCOM policy of denying dual use technology to the Soviet Union has been very successful. Despite notable failures, such as the Toshiba/Kongsberg affair, the Soviet Union has not been able to compensate for its own technological shortcomings by stealing or diverting technology from the West. Despite friction and complaints throughout its forty-year history, COCOM -- and therefore U.S. technology transfer policy -- has achieved its objective.

Obviously, although the threat perception of the West regarding the Soviet Union is at an all time low for the post-war era, a strategic threat still exists. Although withdrawals have begun, the Soviet army still occupies much of Eastern Europe. Its forces will soon be cut by 250,000 men. Their readiness and forward positions will be diminished, and it is estimated that the warning time for a major attack with be extended from two weeks to a month or more. Nevertheless, the Soviet armed forces will still exist in forward bases threatening Western Europe. Mikhail Gorbachev has proven to be very adroit at handling his opposition in the Politbureau. At the present time he seems secure, and his policies of ***perestroika***, ***glastnost***, and retreat from the post-war imperial policies of his predecessors have been grudgingly accepted by the Communist Party. But it should be remembered that he is only one man, and as Nikita Khrushchev's fall from power has shown, it is possible for a popular Soviet leader to wake up one day and find himself out of power. If ***perestroika*** fails miserably, or if the Soviet military feels threatened by the unilateral concessions being offered by President Gorbachev, or if the centrifugal forces of the various nationalities discredit his conciliatory policies, there is always the possibility that the West could find itself dealing with a Soviet leader who resembles Joseph Stalin more than he does Mikhail Gorbachev.

Even if Gorbachev and his policies do survive and persist over the next five years, the transition form the cold war to a less tense and more conciliatory relationship between East and West is likely to be a gradual one. At present, the Soviet Union still has the largest army in the world, backed by tens of thousands of nuclear weapons. Thus, there is going to be a role for NATO in the foreseeable future, and, likewise, there is going to continue to be a role for COCOM. The West should be able to see a significant peace dividend from reduced arms expenditures, but that will not mean that it will be in the interest of the Western Alliance to suddenly remove all controls on technology transfer and provide the Soviets with the technological tools to upgrade the accuracy of their missiles and the quality of their weapons systems.

What should happen over the next few years is a significant increase of sales of products that can increase the standard of living of the average Soviet citizen. The United States does have an interest in seeing ***perestroika*** and ***glastnost*** succeed, and it can provide tangible examples of success to the Soviet people. The machine tool list needs to be updated after a virtual freeze for 16 years. Unfortunately, despite more than a year of negotiations, the results thus far have been disappointing, with little that the U.S. machine tool industry still manufactures proposed for decontrol, or even proposed to be made an administrative exception. Finished computers for civilian projects in banking, oil production, medical products, and consumer goods modernization can also be provided. So too should technology for oil and gas production efficiency and energy conservation be provided. The Soviet oil and gas fields are either mature and close to depletion or in harsh environments. Hence, there is an enormous amount that the U.S. oil and gas equipment industry can do to enhance exploration and recovery. As one of the few hard currency earners available to the Soviets, enhanced oil and gas production may well be the key to financing ***perestroika*** in other parts of the economy.

The key to ***glasnost***, or openness, is telecommunications modernization. The acquisition of a modern, efficient telecommunications system would go a long way towards further opening Soviet society and further liberalizing the political system. Moreover, modern telecommunications is the precondition to successful development and modernization of the Soviet economy. Just as railroads were the basis for modernization in the 1890s, so telecommunications is the precondition for the 1990s. This is an area with little cost and high benefits for the West.

There are numerous projects and opportunities for technology transfer that would reinforce the current trends towards liberalization and modernization of Soviet society, products which would not at the same time provide the Soviet military with valuable -- modernizing tools for their weapons systems. The fact that COCOM has been so restrictive throughout the 1980s provides a great deal of leeway for revision of the list without endangering Western security. Of course, until there is a great deal more confidence building and arms reduction, it would not be prudent to transfer the technology to manufacture micro-electronics, computers, or modern aircraft, but finished products pose no such risk. Just as obviously, it would not be prudent to set up sophisticated joint ventures between Soviet enterprises and Western high technology companies. There is much that can be learned by the military sector from jointly producing even slower computers and less sophisticated semiconductors if the teachers are engineers from IBM, Intel, or Mitsubishi. Such JVs will have to wait for a time in the future when the level of confidence and trust is far higher than it is today.

The technology transfer policy I have just outlined, however, would require a strong and united COCOM, and current trends do not look promising. In an era of increasing globalization of high technology companies; at a time when borders are coming down in the European Community; even during a period of sharply reduced tensions with the Soviet Union; COCOM is still relevant. But, unless the recent Administration proposals bear fruit at the COCOM High Level Meeting in June, there is a very real danger that COCOM will begin to disintegrate at the very time when its policy has begun to pay dividends.

In closing, I would offer the following observations:

1. The "Third Country Initiative" has been a substantial success in inducing non-COCOM countries to cooperate with COCOM in enforcing the high technology embargo on the Soviet Union. Nonetheless, it cannot be truly effective until all high technology producing countries agree to cooperate. Notable non-cooperating countries, such as Brazil and Taiwan, must be signed up. Also, there needs to be a stronger agreement among COCOM countries to harmonize the conditions they put on the sale of products and technology to the cooperating countries and to require standardized documentation from these countries as well. This will be particularly

difficult to accomplish in a period of reduce threat perception, but it is essential to the continued functioning of an effective COCOM.

2. As I have argued, in order to retain COCOM's credibility, it is absolutely critical to significantly shorten the embargo list, concentrating it on technologies of compelling military importance, such as computer and semiconductor manufacturing capability. The criterion for control should be biased towards technology for the production of militarily valuable products, such as micro-electronics, computers, and missile technology. This streamlining of the list needs to be accomplished within 1990, or there is a strong possibility that European and Japanese legislatures will begin to unilaterally make up their own embargo lists outside of COCOM. In such an eventuality, COCOM would continue to exist. It would, however, become increasingly irrelevant.

3. Given the proven inability of the Soviets to reverse engineer micro-electronics of sufficient intricacy and complexity, certain categories of goods could come off the embargo list altogether. Civilian telecommunications is one such example. Increased communications from both within and outside of the Soviet Union could serve only to liberalize further the political climate there and make it more difficult to reverse the current trend toward a more open and pluralistic society.

Facsimile machines and Western television shows are highly subversive products.

4. Despite the difficulties, the modernization of Eastern Europe must proceed rapidly. For this task, technology transfer will be the key. Initially, the emphasis can be on finished products vital to infrastructure improvements: computers, telecommunications, and factory automation. The current China Greenline would be a good starting point for favorable consideration for both Eastern Europe and the Soviet Union. As trust builds, micro-electronics manufacturing capability could be added. It should be noted that the process itself will put additional pressure on the Soviets to make the economic and political reforms that will help convince the COCOM decision-makers to continue to include them in this improving technology transfer relationship.

5. The prospects for reversion to Soviet control of Eastern Europe are low at present and will be reduced still further as Soviet troops are pulled out of Eastern Europe. But that does not mean that the KGB has pulled out of Eastern Europe, or that intelligence cooperation between Eastern European countries and the Soviet Union has ceased. We must, therefore, be cautious and conditional in our approach to technology

transfer in this region. In addition to assurances regarding retransfer of products and technologies, a cessation of illegal intelligence gathering in the West should be a condition of improved licensing of high technology to these countries.

6. We can further ensure that products sold to Eastern Europe do not end up in the Soviet Union by stationing export control personnel in those countries. As I have noted, there is likely to be resistance to our requests to other COCOM countries that they do on-site inspections. But there is no reason why U.S. personnel could not substitute for other COCOM countries' personnel if those countries claim to be short on trained people or the budget to maintain them.

7. In conclusion, I would make the following legislative point. The Bureau of Export Administration was created by the Export Administration Amendments Act of 1985. I was honored to be named as the first Under Secretary of Commerce for Export Administration. I think most observers would agree that BXA is now an effective and well-run organization, with a fine staff or more than 500 people. It has become a model for our allies' licensing and enforcement organizations. Indeed, it is the only U.S. Government agency to which MITI, the Japanese Ministry of Trade and Industry, sends people to be trained.

Although there are few complaints about day-to-day license processing, which is done with accuracy and speed, there are still complaints about the amount of time it takes for decisions on precedent setting cases, for decisions on foreign availability cases, and for COCOM list review and revision. I would argue that as long as there is redundancy, as long as there are two agencies responsible for the very same job, you should expect delay and protracted debate. Regulatory redundancy is a formula for delay and debate even about policies that the Congress clearly mandated and for which it has set tight time deadlines. I would further argue that either you in the Congress believe that the BXA can do the regulatory job assigned to it, or you should turn that job over to the Defense Department.

A more radical solution to the problem would be to create an independent Office of Strategic Trade and Technology, as Senators Garn and Heinz have suggested. That certainly would get rid of what Senator Heinz calls the "three-headed monster" that currently makes policy, and it would provide the U.S. exporter with certainty about policy and licensing decisions, both dual use and munitions. Having been both in the bureaucracy and the Senate Committee staff, however, I have difficulty envisioning ~~three such~~ powerful bureaucracies ceding power to the proposed new agency.

If the proposed OSTT does not turn out to be the Committee's policy preference, a streamlining of the bureaucratic structure of export controls is in order. Such a streamlining should include a clarification of the primacy of the Secretary of Commerce in carrying out the mandate of Congress and a radical staff reduction in redundant export control bureaucracies. This should be done in the name of good government and policy clarity. Otherwise, there is the continuing danger that whatever reforms of the export administration process you enact this year will be undermined by the bureaucratic uncertainty and inter-agency warfare that has sabotaged earlier reform efforts.

Senator **Sarbanes**. Thank you very much.

We have been joined by Senator Graham and Senator Heinz since we started. Senator Graham, did you have any statement you wished to make?

Senator **Graham**. Mr. Chairman, I do not have an opening statement.

Senator **Sarbanes**. Senator Heinz.

Senator **Heinz**. Mr. Chairman, I do have an opening statement but I don't propose to make it at this time. In the interest of hearing from our panelists, I would simply ask unanimous consent that it be included in the record.

Senator **Sarbanes**. It will so be included. I also have statements from Senators Cranston and Dixon that will be inserted in the record.

STATEMENT OF SENATOR HEINZ

Senator **Heinz**. Mr. Chairman, in the last few weeks, I have received no less than six reports from trade organizations representing high tech companies as well as many letters from the companies themselves. Without exception, among their highest priorities for change in the EAA was structural reform of the export control system. Indeed, even as they listed other problem-areas such as a CoCom license-free zone, commodity jurisdiction, interagency disputes, foreign policy controls, and streamlining the control lists, it was apparent that these problems were all, in fact, subsumed by the need for structural reform.

Let me read two typical statements from these reports.

> Our basic goals are to simplify and streamline a complex process, and to create a dynamic system that can make reasonable and timely decisions necessary to adjust the system to a changing world and to eliminate bureaucratic deadlock. Central to achieving these goals is the need to make decision makers accountable for their actions by clarifying and consolidating authority and responsibility, which is now too diffuse. [The 24-member Fortune 500 "Business Group on the Export Administration Act," whose membership includes the three individuals representing trade organization in the panel today.]
>
> While significant progress was made during the [President's Export Council Subcommittee on Export Administration's] tenure (1985–1989) in improving the export control process, the subcommittee feels that there is still a need to consider structural reform of the U.S. export control system. A fresh look at the underlying principles behind the system must be made in light of increased foreign competition in strategic and high-technology products and in view of the expanding Government resource demands of the current control program. [1989 Annual Report to the President by the Presidentially-appointed public sector subcommittee on export controls.]

In my own staff's poll of 29 experts, the lack of a decisionmaking system also ranked among the top two priority areas for change.

Granted, consensus is lacking among these experts on the best way to reform the current structure. The solutions ranged from concentrating all responsibility for export controls in the Department of Commerce to strengthening the National Security Council. If there was an area of consensus, it was to remove the Department of Defense from West-West license review, and East-West license review for goods and technologies below the China greenline.

On October 25, 1989, Senator Garn and I introduced S. 1796, a bill to create a new independent Cabinet-level agency responsible for export controls—the Office of Strategic Trade and Technology. This bill proposes to merge the three frontline offices currently responsible for export controls—the Bureau of Export Administration in Commerce, the Defense Technology Security Administration in Defense, and the Office of Munitions Control in State—into one agency. I believe our witnesses are aware of the bill, and I hope they will comment on it.

STATEMENT OF SENATOR ALAN CRANSTON

Senator **Cranston**. Mr. Chairman, as we move toward reauthorization of the Export Administration Act this fall, it's important that we exercise careful oversight. Today we will hear from two of Reagan administration officials who were directly involved in the operation of the EAA. Their expert testimony should be very helpful, especially since they are no longer bound to uphold the administration line. I hope they will give us their candid opinions on the problems of the act, the interagency disputes, and what the proper responses to the changes in Eastern Europe and the Soviet Union should be. I am particularly pleased that Paul Freedenberg is testifying. He did an excellent job at the Commerce Department and his views will be very valuable to the committee.

And of course, it is essential that we hear from industry. We can sit here and legislate, and the administration can write all sorts of regulations to carry out the law, but it is the men and women in the business community whose livelihoods depend on exports who really know if the law is working. They live and breathe this every day, and they can tell us if the regulations are too cumbersome, the process to slow, the controls out of date. They know if they are losing sales as a result of the law. No where does the EAA have a greater impact than in my State of California—Home of the silicon valley. California was responsible for 24,000 of the 54,000 license applications nationwide in 1989, with a value of over $30 billion. All of the associations represented here today have strong presences in my State and I welcome their witnesses.

I am very interested in hearing what changes the witnesses recommend to the EAA in order to enhance the operation of the system, to maintain and stregthen CoCom, and to address the changing strategic threat resulting from the reforms in Eastern Europe and the Soviet Union. The United States must act quickly and with leadership to address there pressing issues, and the opinions of these witnesses will be very helpful to congress as we reauthorize and reform the EAA.

Mr. Chairman, In my opinion, we have a unique opportunity this year to make significant reforms to the Export Administration Act. Let's not let this challenge go unanswered. As you know, I recently introduced S. 2207, A bill to reform the Export Administration Act. My bills builds on the reforms made in the trade bill be providing A loosening of controls where appropriate and by making additional process reforms to ensure a smoother, more rational control system. It also responds to the dramatic changes in Eastern Europe and the Soviet Union and asks the administration to examine the fundamental premises which underlie the control regime. I hope our withesses will comment on S. 2207.

Frankly, I think my bill is very modest in scope. I hope the Congress is able to make even more reforms than I have suggested. I look forward to working with this subcommittee and the full committee in the months ahead to see that meaningful reforms are made to the Export Administration Act this year.

Thank you, Mr. Chairman.

STATEMENT OF SENATOR ALAN DIXON

Senator **Dixon**. Mr. Chairman, I am pleased to be here this morning as the International Finance Subcommittee conducts its second day of hearings on Reauthorization of the Export Administration Act. We have a good group of witnesses before the committee today, and I look forward to their testimony.

Even though we last reauthorized the EAA only 2 years ago, it makes good sense to go back to take another look at our export control policies. The revolutionary changes that are taking place in Eastern Europe make such a review imperative.

I think we need to make at least three major reforms: First, we need to cut the control list. I think we can significantly shorten the list of controlled items to both the Soviet Union and Eastern Europe without endangering our national security. Perhaps we should be more liberal with Eastern Europe than we are with the Soviets, but we should act.

While there are many new economic opportunities for U.S. firms in the bloc, that is not the main reason why action is required. The real reason is that reducing controls to the Eastern bloc will make it easier for our companies to make sales to free world countries.

We also need to improve our policy coordination and control process. Frankly, we need to put someone more fully in charge. The administration seems to be in disarray, and if we are not careful, we will inadvertently wreck CoCom, which would be very harmful to our national security.

Finally, we need to better coordinate with our CoCom allies to establish a common enforcement framework. As it stands at the moment, the U.S. enforces controls more strictly than our CoCom partners. The result is that U.S. firms are disadvantaged in international competition both in sales to the Eastern bloc and to free world destinations.

I look forward to working with you, Mr. Chairman, and with all the members of the subcommittee and the full committee to see that these essential reforms are made. While the administration does not need legislation to make these reforms, they seem to be incapable of acting. Congress, therefore, must step in, and madate these long overdue, essential changes.

Thank you, Mr. Chairman.

Senator **Sarbanes**. We will now hear from Richard Perle, former Assistant Secretary of Defense for International Security Policy and now resident fellow at the American Enterprise Institute.

STATEMENT OF RICHARD PERLE, RESIDENT FELLOW, AMERICAN ENTERPRISE INSTITUTE, FORMER ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY POLICY

Mr. **Perle**. Thank you, Mr. Chairman.

I would like to begin by thanking the subcommittee for the invitation to appear before you today as you consider the Export Administration Act.

For nearly 20 years I have been deeply involved in those aspects of the Export Administration Act that have to do with the control of exports for national security purposes, first as a member of the Senate staff and later as an official of the Department of Defense.

For all its inadequacies, I believe that the control of exports for national security purposes has been the single most cost-effective program of national defense in the post-war period.

It has slowed the acquisition of advanced Western technologies by the Soviet armed forces.

It has enabled the United States and its NATO allies to maintain a balance of power with significantly fewer forces and weapons than our enemies have possessed.

It has enabled us to supply our allies with weapons that are technologically superior to those supplies to its adversaries by the Soviet Union and its erstwhile Warsaw Pact allies.

It has driven up the costs of empire and aggression, costs that President Gorbachev may now have decided the Soviet Union can no longer afford. By making it harder for the Soviets to achieve military preponderance, national security export controls have contributed significantly to the collapse of the Soviet empire in Eastern Europe.

National security export controls have always aimed at allowing trade in nonstrategic goods while blocking the sale to our adversaries of goods and technologies that would enhance their military capabilities and thus endanger the United States and its allies. That should continue to be the central purpose of national security export controls.

It is a purpose that remains valid even as the people of Eastern Europe struggle to throw off the Communist regimes, maintained in power in the past by the Red Army, under which they have suffered through the post-war period.

In my view, the changes taking place daily in Eastern Europe justify a liberalization in the sale of sensitive technology to nonmilitary concerns in such potential democracies as Poland, Hungary and Czechoslovakia. That liberalization can and should be made consistent with the still valid objective of blocking militarily sensitive technology from reaching the Soviet military machine—a machine, by the way, that continues to consume 25 percent or more of the Soviet gross national product, a dangerous and extravagant misuse of scarce resources that should be massively redeployed in the service of perestroika.

When you hear people comment on how we ought to adjust export controls to assist perestroika—if we were interested in assisting perestroika—we would find a way to persuade the Soviets that draining a quarter of their national wealth into the military is an insurmountable obstacle to economic growth.

In terms of their effort to replace a state-managed economy with a market economy and totalitarian rule with free political institutions, Poland, Hungary and Czechoslovakia are in the vanguard. They deserve intelligently conceived Western help. A relaxation in the CoCom embargo is one measure that should be considered.

There are two ways to relax the CoCom embargo for these countries. One is consistent with our security interests and of potential benefit to the countries involved. The other would damage our security and very possibly injure the cause of democracy in Eastern Europe as well. Let me explain the two approaches.

The first approach, which I favor, would allow sensitive technology to be sold to legitimate nonmilitary concerns in Eastern Europe so long as we were confident that the equipment, know-how and technology would not be diverted to military uses or passed on to the Soviets or others. I mention others, by the way, because we now know from the new government in Czechoslovakia, for example, the extent to which Czechoslovakia in the past has armed terrorists around the world with explosives and the other means of carrying out their terrorist activities. So I think we want to be mindful of the way in which sensitive technologies can be passed into the hands of such enemies as terrorist organizations.

In this approach, we would grant export licenses after having satisfied ourselves that the Eastern European buyer was legitimate and that, once transferred, the licensed material would stay put.

Gaining confidence that technology licensed for sale to Eastern Europe will stay there and be put to civilian use will require putting a control mechanism in place. I believe it can be done and I believe it can be done expeditiously. And the Eastern European countries have indicated a willingness to cooperate in this regard.

Under this approach, liberalization would proceed in general—we could shorten the list—but it would be implemented on a case-by-case basis. Thus, even a very powerful computer needed for the nascent banking system in, say, Hungary would be exportable after a suitable stay-put agreement had been agreed and the appropriate verification measures worked out. A less powerful but still sensitive computer, on the other hand, might fail to gain approval if the Hungarian purchaser in this example were suspect or if an adequate stay-put arrangement could not be put in place and verified.

This approach would allow legitimate advanced technology to go to countries who have for years, until quite recently, worked closely with the KGB to illegally divert embargoed technology to the Soviet Union. Today, Soviet weapons are more effective against our own because of the work of Hungarian, Polish, and Czech intelligence agents. We must assume that many of them remain in place, not because, as we've been seeing, the Hungarians wish to have them there, but because it isn't so easy to get rid of them. If we liberalize in a careless and irresponsible way, we will offer such treasures to the KGB clones in Warsaw, Budapest, and Prague that they will never quit their jobs and seek honest work.

The second approach, which I certainly don't favor, would be simply to raise significantly the level of technology that can be purchased by Eastern Europe without any safeguards. That may look easier than deciding case by case, but it entails a serious risk that Eastern Europe will become transshipment points for embargoed technology destined in reality for the Soviet Union. If we do it this second way, we will be contributing, albeit unwittingly, to the corruption of the emerging market economies in Eastern Europe.

In the absence of case-by-case liberalization with its attendant prospects for vetting and verification, Eastern Europe will become a sieve for illegal diversions to the Soviet Union and perhaps others. If we do it right, we can have our cake and eat it too. If we do it wrong, they will have our cake and eat our lunch as well.

Mr. Chairman, one new provision of the Export Administration Act that was intended by the Congress to protect American industry from unfair competition—a goal with which we would all agree—has become, instead, a vehicle for dangerously unbalanced dismantlement of the national security export controls.

I am referring to the arrangements for the decontrol of goods or technology that is found to be available outside the United States, the cases of so-called "foreign availability."

The effect of this provision in the act has been to create the following anomalous situation: if the Department of Commerce wishes to license an embargoed computer to the Soviet Union, it must consult with the Department of Defense in assessing the national security implications. But if the Department of Commerce unilaterally concludes that the computer in question is available from non-CoCom sources, it can, in effect, license not one such computer but an unlimited number by simply making a finding of foreign availability. It need not consult with the Department of Defense or, for that matter, anyone else. It can "find" foreign availability even when the intelligence community finds the opposite. Its findings need not be accurate, precise or true.

Clearly, it makes no sense to deny an export license to an American exporter when the item for which it is requested is available to the Soviets from sources beyond the control of the United States. Understanding this, the Congress authorized the Secretary of Commerce to decontrol items when the Department of Commerce makes a finding of "foreign availability."

But sure it was the intent of the Congress that findings of foreign availability should be serious, intelligent, careful, precise and well-documented. I simply can't believe that Congress intended that decisions with far-reaching implications for our national security should be made on the basis of tendentious, shallow, inaccurate and poorly documented pleadings that steam-roll the empirical findings of other departments and the U.S. intelligence community.

But that is precisely what has happened at least in some instances. The recent finding of foreign availability of so-called personal computers was a model of incompetence. It failed correctly to define its subject matter. It examined the availability of one item and then decontrolled another. It relied on a standard of evidence that wouldn't pass muster in a freshman course in library research. It was deeply flawed. Its principal conclusions were false.

I would urge the subcommittee, Mr. Chairman, to insist that findings of foreign availability meet a high standard of clarity, thoroughness, accuracy, precision and reliability. The best way to accomplish this would be to add some concrete standards to the statute upon reauthorization and to require interagency collaboration in arriving at final findings. An interagency review mechanism could and should be established in which technical differences can be fairly and objectively resolved.

Finally, I'd like to take just a second to comment on Paul Freedenberg's final remarks which were a familiar refrain—everything would be just fine if the Department of Defense were excluded from the process.

I don't believe that, Mr. Chairman. I don't know how one could expect a balancing of national security considerations against commercial considerations unless there is involved in the process an institution that is intimately familiar with national security requirements, that indeed is involved in the process of judging technologies for their national security implications.

I have no doubt that the mechanisms of collaboration could be improved and I would hope that they would be improved. But the evidence is overwhelming that as a result of the significant investment made in recent years, the Department of Defense now clears cases in record time, generally within 48 hours. It is no longer the source of delay that it was 15 years ago before resources were put into strengthening that institution.

And to dismiss as bureaucratic redundancy the only repository within the Government of knowledge about the national security implications of what is and what is not included in export controls, would seem to me dangerous and shortsighted.

As the committee gropes for the proper place to position the line that we all understand must be located correctly, eliminating the Defense Department entirely from the process would be to place the line in the most thoughtless and irresponsible way.

Thank you, Mr. Chairman.

[The complete prepared statement of Richard Perle follows:]

STATEMENT OF RICHARD PERLE

Resident Fellow
American Enterprise Institute

Before the
Subcommittee on International Finance and Monetary Policy
Senate Banking Committee
United States Senate

March 28, 1990

I wish to thank the Subcommittee for the invitation to appear before you today as you consider the re-authorization of the Export Administration Act. For nearly twenty years I was deeply involved in those aspects of the EAA that have to do with the control of exports for national security purposes, first as a member of the U.S. Senate staff and later as an official of the Department of Defense.

For all its inadequacies, I believe that the control of exports for national security purposes has been the single most cost-effective program of national defense in the post war period.

It has slowed the acquisition of advanced western technologies by the Soviet armed forces.

It has enabled the United States and its NATO allies to maintain a balance of power with significantly fewer forces and weapons than our enemies have possessed.

It has enabled us to supply our allies with weapons that are technologically superior to those supplied to its adversaries by the Soviet Union and its Warsaw Pact allies.

It has driven up the costs of empire and aggression, costs that President Gorbachev may now have decided the Soviet Union can no longer afford. By making it harder for the Soviets to achieve military preponderance, national security export controls have contributed significantly to the collapse of the Soviet empire in Eastern Europe.

The Logic of Export Controls

National security export controls are intended to allow trade in non-strategic goods while blocking the sale to our adversaries of goods and technologies that would strengthen their military capabilities and thus endanger the United States and its allies.

The purpose of these controls remains valid even as the people of Eastern Europe struggle to throw off the communist regimes, maintained in power by the Red Army, under which they have suffered through the post-war period.

In my view, the changes taking place daily in Eastern Europe justify a liberalization in the sale of sensitive technology to non-military concerns in such emerging democracies as Poland, Hungary and Czechoslovakia. That liberalization can and should be consistent with the still valid objective of blocking militarily sensitive technology from reaching the Soviet military machine -- a machine, by the way, that continues to consume 25 per cent or so of the Soviet GNP, a dangerous and extravagant misuse of scarce resources that should be massively redeployed in the service of perestroika.

How to Respond to Poland, Hungary and Czechoslovakia

In terms of their effort to replace a state-managed economy with a market economy and totalitarian rule with free political institutions, Poland and Hungary are in the vanguard. The Poles Hungarians and Czechs deserve intelligently conceived Western help. A relaxation in the COCOM embargo is one measure that should be considered.

There are two ways to relax the COCOM embargo for these emerging democracies. One is consistent with our security interests and of potential benefit to Poland, Hungary and Czechoslovakia. The other would damage our security and very possibly injure the cause of democracy in Eastern Europe as well. Let me explain the two approaches.

The first approach, which I favor, would allow sensitive technology to be sold to legitimate non-military concerns in Poland, Hungary and Czechoslovakia so long as we were confident that the equipment, know-how and technology would not be diverted to military uses or passed on to the Soviets or others. In this approach, we would grant export licenses after having satisfied ourselves (a) that the buyer was legitimate and (b) that once transferred, the licensed material would stay put.

Gaining confidence that technology licensed for sale to one of the emerging democracies will stay there and be put to civilian use will require putting a control mechanism in place. I believe that can be done quickly and effectively.

Under this approach, liberalization would proceed in general but it would be implemented on a case-by-case basis. Thus, even a very powerful computer needed for the nascent banking system in, say, Hungary would be exportable after a suitable stay-put arrangement had been agreed and the appropriate verification measures worked out. A less powerful but still sensitive computer, on the other hand, might fail to gain approval if the Hungarian purchaser were suspect or if an adequate stay-put arrangement could not be arranged and verified.

This approach would allow legitimate advanced technology to go to countries who have for years, until recently, worked closely with the KGB illegally to divert embargoed technology to the Soviet Union. Today Soviet weapons are more effective against our own because of the work of Hungarian, Polish, Czech and other eastern bloc intelligence agents. We must assume that many of them remain in place, not because most Poles or Hungarians or Czechs wish to have them continue but because, as we've been seeing, it isn't so easy to get rid of them. One way to hasten their departure is to diminish their value. If we liberalize in a careless and irresponsible way we will offer such treasures to the KGB clones in Warsaw, Budapest and Prague that they will never quit their jobs and seek honest work.

The second approach would be simply to raise significantly the level of technology that can be purchased by Hungary, Poland and Czechoslovakia without any safeguards. That may look easier than deciding case-by-case; but it entails a serious risk that they will become trans-shipment points for embargoed technology destined for the Soviet Union. If we do it this second way, we'll be contributing, albeit unwittingly, to the corruption of the emerging market system in eastern Europe.

In the absence of case-by-case liberalization with its attendant prospects for vetting and verification, eastern Europe will become a sieve for illegal diversions to the Soviet Union. If we do it right we can have our cake and eat it too. If we do it wrong they'll have our cake and eat our lunch as well.

Amending the Export Administration Act

Mr. Chairman, one new provision of the EAA that was intended by the Congress to protect American industry from unfair competition has become, instead, a vehicle for dangerously unbalanced dismantlement of the national security export controls.

I am referring to the arrangements for the decontrol of goods or technology that is found to be available outside the United States, the cases of so-called "foreign availability."

The effect of this provision has been to create the following anomalous situation: if the Department of Commerce wishes to license an embargoed computer to the Soviet Union it must consult with the Department of Defense in assessing the national security implications. But if the Department of Commerce unilaterally concludes that the computer is available from non-COCOM sources it can, in effect, license not one such computer but an unlimited number by simply making a finding of foreign availability. It need not consult seriously with the Department of Defense or, for that matter, anyone else. It can "find" foreign availability even when the intelligence community finds the opposite. Its findings need not be accurate, precise or true.

Clearly, it makes no sense to deny an export license to an American exporter when the item for which it is requested is available to the Soviets from sources beyond the control of the United States. Understanding this, the Congress authorized the Secretary of Commerce to decontrol items when the Department of Commerce makes a finding of "foreign availability."

But surely it was the intent of the Congress that findings of foreign availability should be serious, intelligent, careful, precise and well-documented. I simply can't believe that Congress intended that decisions with far reaching implications for our security should be made on the basis of tendentious, shallow, inaccurate and poorly documented pleadings that steam roll the empirical findings of other departments and the U.S. intelligence community.

But that is precisely what has happened. The recent finding of foreign availability of so-called personal computers was a model of incompetence. It failed correctly to define its subject matter. It examined the availability of one item and then decontrolled another. It relied on a standard of evidence that wouldn't pass muster in a freshman course in library research. It was deeply flawed. Its principal conclusions are false.

I would urge the Subcommittee, Mr. Chairman, to insist that findings of foreign availability meet a high standard of clarity, thoroughness, accuracy, precision and reliability. The best way to accomplish this would be to add some concrete standards to the statute upon re-authorization and to require inter-agency collaboration in arriving at final findings. An inter-agency review mechanism should be established in which technical differences can be fairly and objectively resolved.

Senator **Sarbanes**. Thank you very much, Mr. Perle.

We have been joined by the chairman of the committee, Senator Riegle. Senator Riegle, do you have a statement you wish to make?

OPENING STATEMENT OF SENATOR RIEGLE

Senator **Riegle**. Thank you very much, Chairman Sarbanes.

We have other committees that are also meeting today, as you know, simultaneous, and the Finance Committee being one where I have been required to be. But I want to commend you very much for scheduling today's hearing and bringing such a truly distinguished list of witnesses before the committee to discuss renewal of the Export Administration Act.

I want to just make a few comments about it. Certainly the totalitarian regimes in Eastern Europe are disintegrating before our eyes and even in the Soviet Union, generally speaking, reforms are proceeding. These fast-developing events raise serious questions about what type of export control regime makes sense in a new era of East-West relations.

These questions are particularly relevant when we know that our allies in Europe and Japan believe that a real relaxation of export controls is now required. If we do not adapt our control regime to the new realities, then CoCom, the organization through which we coordinate controls with our allies, will itself disintegrate and we will end up with controls only on items made by the United States in American companies. We must not allow that to happen.

On March 7, when the administration witnesses from the Departments of State, Defense, and Commerce appeared here before us, it was clear that each department had a different view on what our export control policy should be. I think it's fair to say that at that point and I think even today the administration is in some disarray on the issue and no wonder. How can there be an agreement on what type of national security export controls we should have in place when, on the one hand, the Secretary of Defense and, on the other, the CIA Director have a sharp disagreement on whether the Soviet Union still remains a serious and credible military threat.

I recognize that there still is a need for controls on the exports of the most strategic technologies to the Soviet Union. Few would dispute that. But in my view, we are presently controlling far too many items and we are harming our national security by weakening our manufacturers in their struggle for appropriate export markets in Eastern Europe. And if continued interagency squabbling prevents the administration from developing credible decontrol proposals, then I think clearly that responsibility falls upon the Congress to do it and I would hope we would take the legislative lead in that respect.

I want to again commend you, Senator Sarbanes, for your very important leadership in this area. I think this hearing will assist us greatly in determining what a sensible export control policy for this Nation should be in the post-cold-war era. In this new era, I think our ability to compete economically and not just militarily will prove to be the continuing foundation of our national security.

I thank you for the opportunity, Mr. Chairman.

Senator **Sarbanes**. Thank you very much.

Mr. Hough, we are prepared to hear from you. You are the director of trade administration for Honeywell, but you are also here today authorized to speak on behalf of the National Association of Manufacturers. Is that correct?

Mr. HOUGH. Yes, that's correct.

Senator SARBANES. Will you please go ahead.

STATEMENT OF CHARLES R. HOUGH, DIRECTOR, TRADE ADMINISTRATION, HONEYWELL, INC., REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. HOUGH. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, I am pleased to be here today to present the views of the National Association of Manufacturers regarding the reauthorization of the Export Administration Act.

This is a very important issue for U.S. manufacturers. The 1987 National Academy of Sciences report on U.S. export control policies demonstrates why. This report found that outside of our exports to Canada which are virtually license-free, nearly 50 percent of U.S. manufactured exports need some form of prior approval from the U.S. Government before they leave the country. This figure may have been reduced somewhat over the past year because of the changes in the EAA made in the 1988 Trade Act, but we suspect it is still within this general range.

Let me begin by providing you with a real life example of the impact of our control regulations on a firm such as Honeywell. The example involves our avionics equipment. Honeywell is a market leader in electronics for civilian and commercial aircraft. Our customers are airframe manufacturers and airlines. To the best of our knowledge, Honeywell is the only U.S. avionics supplier left on the Airbus A-320.

We would like to keep this business but it may be jeopardized by our export control policies toward Eastern Europe. If the export licenses for our avionics equipment for the A-320's being sold to Eastern Europe are denied or endlessly delayed, we will be opening the door for our competitors to take the whole business away from us, not just in Eastern Europe but for the rest of the world too. And our competitors are ready to do this. A consortium of European companies has already been formed to enter this business.

We can compete against this consortium, but we are very worried that, because of the hassles over our export control policies regarding Eastern Europe, we will be designed out of the Airbus. In short, we see U.S. control policies toward Eastern European countries as having a direct impact on Honeywell's ability to continue supplying avionics equipment to Airbus. If we see no adjustment in these policies, we are in danger of losing business in Eastern Europe as well as worldwide.

Honeywell is not the only firm facing this type of problem. I would like to share with the subcommittee some other examples that have been brought to the attention of the NAM staff which help illustrate the impact of four control policies on U.S. firms.

A United States firm shipping products from a plant in Western Europe to Eastern Europe found that in 9 out of 10 cases license applications over a 2-year period were processed faster, sometimes significantly so, by the Western European government.

Cases of foreign firms designing out U.S. parts and components because of the extraterritorial reach of U.S. controls have been brought to public attention on a fairly regular basis over the past decade. I have just mentioned Honeywell's worries about this in regard to the Airbus. But even the foreign subsidiaries of U.S. companies are now beginning to do the same.

American semiconductor manufacturers have recently been asked by their Japanese customers to identify how all United States semiconductor products are classified under United States export control regulations. With several types of validated licenses and nearly 20 different general licenses, complying with these requests would involve thousands of engineering decisions and essentially mean assigning full-time engineers to the job of classifying U.S. products rather than developing them.

And finally, I would like to draw the subcommittee's attention to an example involving the export of fasteners—nuts and bolts—to Great Britain. This example would take too long to run through here, but I have attached a short memo to my testimony which I hope you will take time to read.

I would like to close this part of my testimony with another case example involving an experience Honeywell had trying to complete a sale of a building automation system in Czechoslovakia. The system was comprised of several instruments that are run by a personal computer. The instruments could be exported under a general license, but we needed to obtain a validated export license from Commerce for the personal computer before shipping it. I must add that this was before the personal computer decontrol decision. We applied for this license.

To make a long story short, it took 20 months to get a license in this case. At one point, our Austrian general manager thought he could deal with the problem by buying a PC in Bulgaria, but I had to remind him that the Treasury Department transaction control regulations prohibit him from acquiring a PC in Bulgaria and sending it to Czechoslovakia.

Now why have I dragged you through this one last story? I think it prompts several questions. In this instance, was national security advanced because we kept one personal computer out of Czechoslovakia for nearly 2 years? I would say no. Would any competitor in any other country have to go through this kind of bureaucratic hassle trying to do business? I would again say no. Is the expense for industry to comply with and government to administer outdated regulations benefiting anyone? I would say yes, our foreign competitors.

Obviously, these are the types of questions we should be discussing during the debate over the reauthorization of the EAA and it is to this subject I would like to turn now.

Mr. Chairman, the NAM believes that the time has come for fundamental reform of the export control system. A new system needs to be developed which essentially recognizes that the exporting of commercial products is a right which should not be abridged if clear and convincing evidence exists concerning the military/strategic threat posed by a particular transaction. Export control policies must do a better job of taking into account the fact that U.S. economic strength and trade competitiveness is the most important component of our national security as we approach the 21st century.

NAM has a policy statement outlining the changes we would like to see made in the EAA this year. I would like to submit a copy of the document for the record and briefly summarize the points here.

The Department of Commerce should be given the clear responsibility and authority for running the export controls system governed by the EAA. Other agencies should not have de facto veto power over Commerce decisions. Disagreements between departments should be sorted out through the establishment of a viable dispute settlement mechanism.

The EAA should be amended to establish clear Commerce Department jurisdiction over so-called dual use products and technology. In addition, Congress should require that the U.S. control list be harmonized with the CoCom industrial list. It is only logical that if a product or technology is treated as a dual use item under CoCom it should be treated the same way under the U.S. control system.

The processing of all export applications should be centralized in the Department of Commerce. This would not alter the responsibilities of the Department of State to make substantive decisions regarding the approval of munitions license applications; rather, it would take advantage of Commerce's administrative expertise in handling the paperwork connected with the license applications.

It is vital that the control list be streamlined. This could be done by strengthening the indexing provisions in the current law, by improving the foreign availability provisions, and by providing for the automatic sunsetting of items on the control list.

A specific deadline for establishing a license-free CoCom area should be established in the EAA.

And finally, the United States should adopt, along with other CoCom nations, an across-the-board liberalization of control policies toward Eastern Europe similar to the so-called China "green zone."

As noted above, all of these recommendations are spelled out in more detail in the attached NAM policy statement.

Mr. Chairman, this concludes my testimony and I would be happy to answer questions.

[The complete prepared statement of Charles Hough follows:]

MANUFACTURING CREATES AMERICA'S STRENGTH

TESTIMONY

OF
CHARLES R. HOUGH
DIRECTOR, TRADE ADMINISTRATION
HONEYWELL INC.

ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

ON
EXPORT ADMINISTRATION ACT REAUTHORIZATION

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY
BANKING, HOUSING & URBAN AFFAIRS COMMITTEE
UNITED STATES SENATE

MARCH 28, 1990

NAM

National Association of Manufacturers
1331 Pennsylvania Avenue, NW, Suite 1500 — North Lobby
Washington, DC 20004-1703 (202) 637-3000

The National Association of Manufacturers is a voluntary business association of more than 13,500 member companies and subsidiaries, large and small, located in every state. Members range in size from the very large to the more than 9,000 smaller manufacturing firms, each with fewer than 500 employees. NAM member companies employ 85 percent of all workers in manufacturing and produce more than 80 percent of the nation's manufactured goods. NAM is affiliated with an additional 158,000 businesses through its Associations Council and the National Industrial Council.

TESTIMONY

OF
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ON BEHALF OF THE
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BANKING, HOUSING & URBAN AFFAIRS COMMITTEE
UNITED STATES SENATE

MARCH 28, 1990

Mr. Chairman, members of the subcommittee, my name is Charles Hough. I am Director for Trade Administration at Honeywell Inc. I am pleased to be here today to present the views of the National Association of Manufacturers (NAM) regarding the reauthorization of the Export Administration Act (EAA).

This is a very important issue for U.S. manufacturers. The 1987 National Academy of Sciences report on U.S. export control policies demonstrates why. This report found that outside of our exports to Canada which are virtually license free nearly 50 percent of U.S. manufactured exports need some form of prior approval from the U.S. Government before they leave the country. This figure may have been reduced somewhat over the past year because of the changes in the EAA made in the 1988 Trade Act, but we suspect it is still within this general range.

I believe the most useful contribution I can make in today's hearings would be to provide you with some examples of how U.S. export controls affect American firms and then to outline briefly what NAM thinks needs to be done in the reauthorization of the EAA this year.

Case Examples

Let me begin by providing you with a real life example of the impact of our control regulations on a firm such as Honeywell. The example involves our avionics equipment. Honeywell is a market leader in electronics for civilian and commercial aircraft. Our customers are airframe manufacturers and airlines. To the best of our knowledge, Honeywell is the only U.S. avionics supplier left on the Airbus A-320.

We would like to keep this business but it may be jeopardized by our export control policies toward Eastern Europe. If the export licenses for our avionics equipment for the A-320s being sold to Eastern Europe are denied or endlessly delayed, we will be opening the door for our competitors to take the whole business away from us, not just in Eastern Europe but for the rest of the world too. And our competitors are ready to do this. A consortium of European companies has already been formed to enter this business.

We can compete against this consortium, but we are very worried that, because of the hassles over our control policies regarding Eastern Europe, we will be designed out of the Airbus. In short, we see U.S. control policies toward Eastern European countries as having a direct impact on Honeywell's ability to continue supplying avionics equipment to Airbus. If we see no adjustment in these policies, we are in danger of losing business in Eastern Europe as well as worldwide.

Honeywell is not the only firm facing this type of problem. I would like to share with the Subcommittee some other examples that have been brought to the attention of NAM staff which help illustrate the impact of our control policies on U.S. firms:

- A U.S. firm shipping products from a plant in Western Europe to Eastern Europe found that in 9 out of 10 cases license applications over a two-year period were processed faster, sometimes significantly so, by the Western European government than by the Unites States Government. In this case, nearly 330 license applications were involved. Licenses were required from both governments because the products incorporated U.S technical data.
- Cases of foreign firms designing out U.S parts and components because of the extraterritorial reach of U.S controls have been brought to public attention on a fairly regular basis over the past decade. I have just mentioned Honeywell's worries about this in regard to the Airbus. But even the foreign subsidiaries of U.S. companies are now beginning to do the same.
- American semiconductor manufacturers have recently been asked by their Japanese customers to identify how all U.S. semiconductor products are classified under U.S. export control regulations. The American firms have also been asked to obtain any necessary re-export licenses. The Japanese firms have stated that they

cannot increase purchases of U.S semiconductors without this information because they are afraid of running afoul of U.S. control regulations, especially re-export controls. With several types of validated licenses and nearly 20 different general licences, complying with these requests would involve thousands of engineering decisions and essentially mean assigning full time engineers to the job of classifying U.S. products rather than developing them.

- And finally, I would like to draw the Subcommittee's attention to an example involving the export of fasteners (nuts and bolts) to Great Britain. This example would take too long to run through here, but I have attached a short memo to my testimony which I hope you'll take time to read.

I would like to close this part of my testimony with another case example involving an experience Honeywell had trying to complete a sale of a building automation system in Czechoslovakia. The system was comprised of several instruments that are run by a personal computer (PC). The instruments could be exported under a general license, but we needed to obtain a validated export license from Commerce for the personal computer (PC) before shipping it. We, therefore, applied for such a license.

After our license for this PC was at Commerce for about one year, we were told that Commerce intended to deny it. At this point I was faced with the task of informing Honeywell's Austrian General Manager that his license was going to be denied and he was not going to be able to complete this contract. He responded that a denial would not really be a problem because he could obtain a PC in Bulgaria and send it to the customer. At this point I had to remind him that he could not do that because of the Treasury Department Transaction Control Regulations. These regulations prohibit a subsidiary of a U.S. company from "arranging" the purchase or sale of COCOM controlled commodities for entities in Eastern Europe or the People's Republic of China unless it is licensed by a COCOM government. Since Austria was not a COCOM member, he was out of luck.

The license for the PC was denied and we appealed. After months of consideration, the license was granted -- twenty months after we first applied.

Now why have I dragged you through this story? Because I think it prompts several questions:

- In this instance, was national security advanced because we kept one personal computer out of Czechoslovakia for nearly two years? I would say no.
- Would any competitor in any other country have to go through this kind of bureaucratic hassle when trying to do business? I would say no.
- Is the expense for industry to comply with and government to administer outdated regulations benefiting anyone? I would say yes -- our foreign competitors.

Obviously, these are the types of questions we should be discussing during the debate over the reauthorization of the EAA and it is to this subject I would like to now turn.

Reauthorization of EAA

Mr. Chairman, the NAM believes that the time has come for fundamental reform of the export control system. A new system needs to be developed which essentially recognizes that the exporting of commercial products is a right ~~which~~ should be abridged only if clear and convincing evidence exists concerning the military/strategic threat posed by a particular transaction. Export control policies must do a better job of taking into account the fact that U.S. economic strength and trade competitiveness is the most important component of our national security as we approach the 21 century.

NAM has a policy statement outlining the changes we would like to see made in the EAA this year. I would like to submit a copy of this document for the record and briefly summarizes the points here:

1. The Department of Commerce should be given the clear responsibility and authority for running the export controls system governed by the EAA. Other agencies should not have de facto veto power over Commerce decisions. Disagreements between departments should be sorted out through the establishment of a viable dispute settlement mechanism.
2. The EAA should be amended to establish clear Commerce Department jurisdiction over so-called dual use products and technology. In addition, Congress should require that the U.S. Control List be harmonized with the Cocom Industrial List. It is only logical that if a product or technology is treated as a dual use item under Cocom it should be treated in the same way under the U.S. control system.

3. The processing of all export applications should be centralized in the Department of Commerce. This would not alter the responsibilities of the Department of State to make substantive decisions regarding the approval of munitions license applications; rather, it would take advantage of Commerce's administrative expertise in handling the paperwork connected with license applications.
4. It is vital that the Control List be streamlined. This could be done by strengthening the indexing provisions in the current law, by improving the foreign availability provisions, and by providing for the automatic sunsetting of items on the control list.
5. A specific deadline for establishing a license-free Cocom area should be established in the EAA. And finally -
6. The U.S. should adopt along with other Cocom nations an across-the-board liberalization of control policies toward Eastern Europe similar to the so-called China "green zone".

As noted above, all of these recommendations are spelled out in more detail in the attached NAM policy statement.

Mr. Chairman, this concludes my testimony. I would be glad to answer questions.

Date

MEMORANDUM

TO: Howard Lewis III

RE: Commerce/State Commodity Jurisdiction

In 1989, a U.S. exporter sold approximately $150,000 of dual use aircraft fasteners to a company in the UK. The identical fasteners are produced in Germany, France, and Japan. They are used for a wide variety of applications, including: civilian and military aircraft, automobiles, bridges, locomotives, and other applications where two pieces of metal are joined and are subject to stress. Moreover, the patens on the fasteners has just expired and the design was available to any interested party.

During a routine Customs inspection, the fasteners (which mostly are machined screws and bolts) were sized by U.S. Customs for an ITAR violation. Why? Because the fasteners were to be used in fighter aircraft. The company tried in vain to explain to the State Department that the fasteners in question were not designed for military aircraft. They explained that generally manufacturers make a series of fasteners which, rather than being designed for a specific product, are taken off the shelf" and are designed into a product. Thus, a fastener could be used in a civilian jet, as well as a military craft. State's position was steadfast and refused to direct Customs to release the seized goods.

The company submitted a classification request to the Commerce Department. After submitting exhaustive information, including on the molecular structure of the metal, Commerce concluded that the fasteners could be exported under General License G-DEST. In other words, they could be sold to the USSR without the prior approval of the U.S. Government. Every document submitted to Commerce was also sent to State. What was the response from the State Department? The goods require a munitions license because of their end use.

Instead of explaining how the company was compelled to escalate the matter through the State

Department's bureaucracy, it should be noted that an appeal had to be made to very senior officials at OMC (now the Office of Defense Trade). What resulted was a decision by State (1) to classify the goods as dual use items, and (2) to direct Customs to release the goods.

What was the result of these efforts. After a delay of several weeks, the fasteners were finally shipped to the U.K. The company in the U.K. is now purchasing fasteners from European sources.

The lessons from this "little" incident are straightforward. The goods in question should never have been subject to a seizure directive from State. State should have accepted the Commerce Department's classification review. The "turf" battle for control over exports is harming U.S. exporters.

NAM
National Association
of Manufacturers

International Economic Affairs

MARCH 1990

NAM POLICY STATEMENT
ON
REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

The National Association of Manufacturers believes that the time has come for fundamental reform of the export control system. A new system needs to be developed which essentially recognizes that exporting is a right which should be abridged only if clear and convincing evidence exists concerning the military/strategic threat posed by a particular export transaction.

U.S. commercial and national security interests today are probably more closely entwined than they have been at any other time since the end of World War II. In a speech, this past November, Deputy Secretary of State, Lawrence Eagleburger, stated that "we as a government and as a society are going to have to acknowledge that our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century."

For at least three basic reasons, the Export Administration Act (EAA), which needs to be reauthorized in 1990, is one obvious policy area where Mr. Eagleburger's statement needs to be recognized:

1) Economic competition: If nothing else the past decade should have driven home to all of us the fact that American industry faces significant foreign competition, even in the high technology sector which of course is the primary industrial sector affected by control policies. The U.S. began the decade of the

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1980s with a $20 billion trade surplus in this sector. By the middle of the decade this surplus had completely disappeared; we in fact has a deficit of $600 million in 1986. At the end of the decade, the U.S. surplus in high technology has returned, but only half of what it was in 1981.

2) Rapid technology change: Technology change is now taking place at a pace so rapid that it makes it difficult, if not impossible, for the export control system to keep pace. For example, computer technology is evolving so quickly that it is now possible in a commercial computer store to buy a "supercomputer" as presently defined under today's export control regulations.

3) Changed military threat: The extraordinary political developments in Eastern Europe over the past year as well as the continuing economic and political changes in the Soviet Union have altered in a fundamental way the military threat to the U.S. posed by the Warsaw Pact. The chances of a military invasion of Western Europe have been drastically reduced. Unification of Germany is around the corner. And the development of a multi-party system in the Soviet Union seems to be moving forward.

Under these circumstances, a fundamental change in the basic premises underlying U.S. export controls as they apply to West-West as well as East-West trade is necessary. Technical adjustments in our control policies will not be enough. Export control policies must take into account the fact that U.S. economic strength and trade competitiveness may be the most important component of our national security as we approach the 21st century. To recognize this reality, the control system needs to operate on the underlying assumption that commercial export transactions should not be controlled unless clear and convincing evidence exists concerning the military threat posed by such transactions.

Unfortunately, the interagency bureaucracy governing export controls is geared more toward technical adjustments than fundamental change. Despite all the efforts of the past decade to improve the balance in the control system, it still tilts in favor of those who want to continue controlling a large portion of U.S. commercial exports. Nothing demonstrates this point better than a 1987 National Academy of Sciences study which found that 40 percent of manufactured exports need some form of prior approval from the U.S. Government to get out of the country. Recent changes in the EAA coming out of the 1988 Trade Act may have reduced this figure somewhat.

Legislative Priorities

The tilt in the system favoring continued controls on a wide range of commercial products needs to change and NAM believes this can be achieved, in part, through the following changes in the EAA:

1. Provide clear Commerce Department authority over the control system governed by the EAA: The Secretary of Commerce in Section 5(a) is given the basic authority to administer the

export control system "in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate ...." But various other provisions in the EAA, as well as regulatory procedures, curtail this basic authority. For example, provisions such as 5(c)(2) or 10(g) effectively allow the Defense Department to stalemate Commerce decisions on licensing and policy matters in spite of deadlines built into the law. An executive order allowing Office of Management and Budget (OMB) review of proposed regulations provides another avenue to delay decisions by Commerce. An example of this type of delay was recently seen when Commerce attempted to issue regulations to implement the control provisions contained in the 1988 Trade Act.

Congress needs to reaffirm under Section 5(a) that Commerce has the final jurisdiction over all items on the Control List as well as the control system governing these items. For the preceding actions to have any effect, modification of the authority granted to the Defense Department, especially under Section 10(g), would be required.

2. Establish Commerce Department jurisdiction over so-called dual use products and technology: The EAA is the basic law governing the export of so-called dual use items--commercial products that have possible military significance. Recently, a variety of dual use items have been put on the Munitions List administered by the State Department under the Arms Export Control Act. Examples of this include commercial satellites, navigation equipment for commercial aircraft and bank teller machines.

NAM believes that Section 5(c) should be amended to provide clear Commerce Department jurisdiction over dual use products and technology. Congress should require that the U.S. Control List be harmonized with the Coordinating Committee for Multilateral Security Export Controls' (COCOM's) Industrial List so that the two lists cover the same items. It is only logical that if product or technology is treated as a dual use item under COCOM it should be treated in the same way under the U.S. control system.

3. Centralize license processing: We believe serious consideration should be given to the idea of centralizing the processing of all export applications--foreign policy, national security, munition licenses--in the Department of Commerce. This would not alter the responsibilities of the Department State to make the substantive decisions regarding the approval of munitions license applications; rather; it would take advantage of Commerce's administrative expertise in handling the paperwork connected with license applications. The State Department's ability to process munitions export licenses is completely inadequate. Rather than duplicate the administrative bureaucracy that already exists in Commerce, the State Department should take advantage of the Commerce system to handle the paperwork side of their licensing process.

Some people believe that this would be the wrong time to move toward a single license processing system since the State Department is making a good faith effort to improve their munition licensing system. Undoubtedly the State Department is making a good faith effort to improve its system. Still, an NAM member made the following comment: "... a good faith effort is not good enough when you have allowed an office to get 4,000 licenses behind ... In addition, I learned this week that State's current automation plans will lead to a system that is not compatible with Commerce or Defense systems. If not an example of the gross waste of the government's money, it certainly is an indication to me that State is not interested in seeking a swift and accurate license processing system."

4. Establish a dispute settlement mechanism: Closely connected with the preceding issues is the need to establish an appropriate interagency dispute settlement mechanism. The EAA should direct the Secretary of Commerce to develop a procedure, with time deadlines, that would allow for the resolution of disputes over factual and policy questions involving export control decisions. Such a procedure should provide adequate opportunity for the affected exporter to present his case. If a dispute between Commerce and another agency such as Defense cannot be resolved under these procedures, it would be sent to the President who would have to respond within a reasonable amount of time. If the National Security Council (NSC) became involved in such a case, the deliberations and final recommendations of the NSC should include both the Secretary of Commerce and the United States Special Trade Representative.

5. Streamline the Control List: Given the rapid pace of technological developments and the short 2-3 year life cycles of many high technology products, it is vital that the Control

List be streamlined. Two legislative changes would be useful in this regard: 1) mandating that the U.S. Control List be harmonized with COCOM's Industrial List as discussed above; and 2) strengthening the indexing provisions of current law (Section 4(g)) by requiring that the Commerce Department shall issue regulations establishing an indexing procedure within six months of the bill's enactment. Current law simply states that the Department may issue such regulation; something which has not happened to date.

6. Specify deadline for establishing a license-free COCOM area: In light of commitments made in COCOM to implement common standards for national export control systems by the end of 1991, as well as the efforts in the European Community to develop a common internal market by 1992 (EC-92), it is more important than ever to establish a license-free COCOM area. This would alleviate a significant burden on the licensing system since roughly 65 percent of all individual-validated licenses are issued for exports to COCOM.

   It appears to us that the best way to achieve this goal would be to declare under Section 4(a) and (b) of the statute that by a given date no authority or permission would be required to export or reexport goods or technology to COCOM and the so-called 5(k) countries. December 1991 would be the logical deadline to set in the law for instituting such a policy.

The preceding are legislative changes dealing with national security controls which NAM believes would help improve our control system.

But these legislative priorities are not the only ones the business community has. There are additional priorities, not necessarily requiring changes in U.S. law, which should also be recognized.

Other priorities

East-West Trade: The need to improve the U.S. control system as it affects West-West trade would be reason enough to justify the preceding changes in the EAA. After all, 95 percent of U.S. validated licenses are granted for exports to non-communist destinations. Recent development in Eastern Europe and the Soviet Union, however, require reevaluation of our approach to East-West controls. Several points need to be made on this subject.

- NAM members do not feel that a case-by-case approach to liberalization of East-West export controls will be sufficient. The U.S. needs to develop with other COCOM nations an across-the-board liberalization of control policies similar to the so-called China "green zone."
- The technology threshold levels for the "green zone" need to be raised. American computer companies, for example, are rapidly moving out of the production of equipment below current threshold levels. Therefore, without adjustment, adoption of these thresholds will have little impact or benefit for U.S. firms. In cases involving clear civilian use, allowances should be made for exceeding these levels.

- The EAA should provide authority for distribution licenses to Eastern Europe. Congress provided similar authority in the 1988 Trade Act for distribution licenses to China. And finally -
- The U.S. needs to focus on the process to be followed under Section 5(b) for removing nations from the list of controlled countries. Forthcoming elections in Eastern Europe could well provide the basis for such action. Congress should ask the Secretary of Commerce to report on the outcome of each of these elections and how this may affect a particular nation's status as a controlled country under the EAA.

COCOM: Obviously, the type of changes discussed above have enormous importance for the future of COCOM. NAM believes that it is important that COCOM licensing and enforcement procedures be harmonized and that COCOM continue to function as the primary mechanism for the coordination of multilateral export controls. This will not occur, however, unless COCOM is able to rid itself of unnecessary and outdated controls. To achieve this objective, it will be necessary 1) to modify the decisionmaking process in COCOM, allowing in some instances for a change in the current unanimity voting rule, and 2) to increase the transparency of COCOM by, for example, publishing the international control lists.

Foreign Policy: In a recent NAM survey, the unilateral imposition of foreign policy controls was one of the top concerns identified by NAM members. NAM has not reached the conclusion at this time that major changes to the Foreign Policy Section of the EAA (Section 6) are necessary. But we do want to underline the importance we attach to seeing that the current provisions in this Section are implemented to the fullest extent. Moreover, NAM would be adamantly opposed to any weakening of provisions in Section 6 during the EAA reauthorization this year.

We are also increasingly concerned about the use of unilateral foreign policy controls either under Section 6 or other U.S. laws to govern U.S. exports to non-communist destination for national security reasons. Examples of this include foreign policy controls on missile technology, chemical/biological weapons precursors, and supercomputers. It is important that the U.S. pursue such controls on a multilateral rather than on a unilateral basis.

Senator SARBANES. Thank you very much, Mr. Hough.

We will now turn to Mr. Bill Burck, assistant general counsel of International Data General. Mr. Burck, I understand you are speaking on behalf of the American Electronics Association.

Mr. Burck. Yes, I am.

Senator Sarbanes. We would be pleased to hear from you.

STATEMENT OF BILL BURCK, ASSISTANT GENERAL COUNSEL, INTERNATIONAL DATA GENERAL; ON BEHALF OF THE AMERICAN ELECTRONICS ASSOCIATION

Mr. BURCK. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, I am assistant general counsel for Data General Corp. I am also pleased to be here to represent the views of the American Electronics Association on the reauthorization of the EAA.

Clearly, for U.S. electronics companies as a whole, this issue is extremely important. AEA represents more than 3,500 electronics and information technology companies throughout the United States and this industry itself employs over 2.5 million Americans, making it the largest U.S. manufacturing industry. Data General itself is a worldwide manufacturer of computer systems employing over 13,000 persons and generating revenues of close to $1.4 billion. Over 50 percent of our revenue in the last year was generated by export sales and we expect this trend to continue upward and by 1993 to have 70 percent of our income from outside the United States.

The U.S. electronics industry is one of the most severely controlled industries under the EAA which is clear from the testimony today and also from the record. The survival of this industry is increasingly related to our ability to export. In fact, for many of our companies, as I said, the revenues will come from foreign sales. The increment of the sales will come from that area.

We believe now that CoCom is headed for a critical juncture this June. With the rapid change and dramatic events throughout the world, we are concerned that U.S. export control policy—the process itself—has not effectively responded to the demands and the dictates of the times.

Unless the United States seriously reforms its system, CoCom will disintegrate. I have no doubt. It may be there, but it will be only an irrelevant relic of the cold war. We believe that a strong and unified CoCom is essential and we support efforts to preserve it. If CoCom is treated as an irrelevant relic, it will not be in the interest of the United States or that of our European allies.

So, Mr. Chairman, the U.S. export control system stands at a crossroads now. We can either proceed on the current path of resistance, of looking backward and not addressing the issues that all of our allies are talking about today, or take a new road to a significantly and reformed system that more accurately reflects the political, economic and security realities of the 1990's and beyond.

My written statement provides several examples of where the system has broken down. I am personally witness to over 20 years of working with the export administration and with previous companies and in private practice. I won't repeat those here, but I would like to provide an example from the very recent past at Data General.

We have recently executed and have registered with the Ministry of Foreign Relations and Finance in the Soviet Union a joint venture in which we have an equity interest and we are the first computer company to have a joint venture with a Soviet company as such in the Soviet Union in the computer area.

One of the things that we were very interested in having a demonstration system of a relatively unsophisticated 5- or 6-year-old technology 32 bit computer machine for them to begin developing Cyrillic capabilities and to examine our own capabilities and the needs of the Soviet system to absorb our technology and to use it effectively.

To do that, we also needed a particular cadcam, a computer machine package, which came from the United Kingdom. When we submitted this demonstration system to the export licensing authority in the United States it took them 5 months to make the initial inquiry and to tell us that the demonstration system was unacceptable partially because of the fact that we had the software system from the United Kingdom on it. So we deleted that and simply went over to the United Kingdom and asked them if we could ship it out and we got that license in one week. Something is wrong with a system that allows the United Kingdom to do something with their own software that we decide in an extraterritorial sense to do something very different. This delays the process, annoys our joint venture partners and cost sales in the interim.

I'm a little hot about it. It hurt us considerably at the time and I wanted to bring that to the attention of the committee. I can bring in numerous other examples. I know the AEA is witness to at least one company that took 18 months to design a very sophisticated system which they wished to sell. It took 19 months for the export licensing authorities to get around to seeing whether the license was good or not. That is well past the time necessary to design and develop the system and it seems to be illogical. It also misses that very important need to get to market in order to take advantage of the technological competency that we have in this country and we will only have if we are allowed to export it and show it to the rest of the world.

AEA has been actively working with the administration and Congress to correct various deficiencies. My written statement has a list of eight specific objectives. I'd just like to summarize them here and request that we be allowed to present at a later date our detailed recommendations for the record. Let me just briefly summarize these points, many of which have already been stated.

We want to recognize in EAA the right to export, not just a privilege to export; a right to export. The right to export existed in this country long before the EAA existed. We must recognize this in promoting both security and exports. We must recognize that both the right to export and the right to maintain U.S. security are not inconsistent.

We must establish clear responsibility and final authority in the Commerce Department for the full administration of the export control system governed by the EAA. While section 5 of the act gives Commerce the authority, such authority is diminished through other provisions and executive orders.

Elimination of all requirements, without exception, for exports to and among CoCom allies. We believe that if our multilateral control system is going to be effective, and give credence to the multilateral system, we must have trust in the integrity of other member countries' export control system.

We must eliminate the U.S. re-export requirements for exports from CoCom. This is absurd. United States re-export requirements from CoCom are redundant. For re-export of controlled items from CoCom the U.S. requires prior U.S. authorization. This requirement is simply in addition to the requirement of license of the CoCom Government for export.

CoCom must be an effective multilateral tool and must be treated in that fashion.

Significant liberalization for Eastern Europe and possibly the Soviet Union is in line. The AEA has developed an 8-point plan for liberalizing export controls to Eastern Europe and the Soviet Union and we submit that as a supplement to our testimony.

We need significant streamlining of the list if we are to maintain an effective and enforceable control system. This can be done in several ways. First, Congress should mandate that the United States control lists be harmonized with the CoCom industrial list. Then, Congress should strengthen current indexing provisions in the act, clarify and improve the foreign availability provisions, and provide for sunsetting clearly of items on the list.

As a corollary, the U.S. process for development of U.S. proposals for CoCom must be clearly established and Commerce must have clear authority over the list review process. We also must establish clear jurisdictional authority for dual use items in Commerce and provide for an adequate dispute resolution process for commodity classifications. Companies should not be placed in a situation of not knowing who has authority to license their products. A system in which responsibility is unclear places companies at risk of unknowingly violating U.S. export control laws—even after being advised by a government agency as to level of control.

My own comments and testimony are somewhat redundant to Mr. Hough's and to other persons on this panel. I think this shows that there is a unanimity among many, many associations and companies within associations of the need—of the crying, desperate need to change the way we look at export administration regulations, bring some logic and consistency to the regulations and show to our trading partners in the world that we are going to export effectively and retain a strategic position and our leadership in the world.

Thank you.

[The complete prepared statement of Bill Burck follows:]

TESTIMONY
OF
BILL BURCK
ASSISTANT GENERAL COUNSEL, INTERNATIONAL
DATA GENERAL

ON BEHALF OF THE
AMERICAN ELECTRONICS ASSOCIATION

ON THE
REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL FINANCE
AND MONETARY POLICY
BANKING AND URBAN AFFAIRS COMMITTEE
UNITED STATES SENATE

MARCH 28, 1990

Mr. Chairman, members of the subcommittee, I am Bill Burck, Assistant General Counsel for Data General. I am pleased to be here today to present the views of the American Electronics Association (AEA) on the reauthorization of the Export Administration Act.

For U.S. electronics companies, this issue is one of extreme importance. AEA represents more than 3,500 electronics and information technology companies throughout the country. The industry employs over 2.5 million Americans, making it the largest U.S. manufacturing industry. Data General is a worldwide manufacturer of computer systems employing 13,000 people and generating revenues of $1.3 billion. Over 50 percent of our revenue is generated by export sales. The U.S. electronics industry is one of the most severely controlled industries under the EAA. Interestingly, our industry's survival is increasingly linked to our ability to export. In fact, for many of our companies, over half of their revenue comes from foreign sales. A point which was made last month when AEA member companies testified before Commerce on the viability of the U.S. computer industry and the effect of a proposed supercomputer definition.

We believe that the U.S. is at a critical juncture in this area. The U.S. system appears incapable of effective leadership and our European allies strongly believe that COCOM is a relic incapable of adapting to a dynamic strategic and political landscape. Unless the United States seriously reforms its system, COCOM could disintegrate. At best, it may just be an irrelevant relic of the Cold War. We believe that a strong and unified COCOM is essential and we support efforts to preserve it. If COCOM is treated as an irrelevant relic, it will not be in the best interest of the U.S. or our European Allies.

So, Mr. Chairman, the U.S. export control system stands at a crossroads. We can either proceed on the current path of resistance or take a new road to a significantly reformed system that more accurately reflects the political, economic and security realities for the 1990s and beyond.

At no time has it been more important for COCOM to be strong and unified. It is, however, dangerously close to the opposite. Mr. Chairman, an AEA delegation has just returned from Europe and I can assure you that COCOM is at risk. Our allies have lost faith in a system that does not keep pace with the rapid advancement of technology, a system that cannot adjust to changing security, political and, more importantly, technological realities. The United Sates must seriously and substantially modernize its system or risk the demise of COCOM.

THE CURRENT SYSTEM

In the wake of monumental and historic change, the current system has not produced an effective response. The system is unable to respond efficiently and effectively to market and technological forces, political change or strategic developments. To illustrate this, I want to provide some examples:

Technology and Market Forces

* In the high technology industry where product life cycles are relatively short (e.g., 24 months), being first to market is critical if a company wants to establish itself in an emerging market. The current export control system severely restricts first-to-market companies. For example, one company reported that it took 18 months to design and

develop its product but it took 19 months to get an export license. In that time, a competitor can introduce its product and capture the same market before a U.S. company can even ship.

- Supercomputer technology is developing so quickly, the Administration's proposed definition of a supercomputer was obsolete before it was published. Efforts to have the Administration develop a "sliding scale" formula to account for technological change and security considerations have been unsuccessful.
- Before a company sells a product, it often demonstrates the product to potential customers either through trade shows or specially arranged demonstrations. Our COCOM partners are routinely granted permission to demonstrate their products. One U.S. company received a demonstration license for its product manufactured in Europe. Yet, the same product manufactured in the U.S. was denied a demonstration license by the U.S. government.
- The Soviet Union and Eastern Europe have severe environmental pollution problems. However, the most of the process control equipment necessary to regulate factory emissions is controlled.

Political and Strategic Change

- The Administration and Congress have recognized the need to assist political and economic reform in East Europe. Legislation passed in 1989 directed the Administration to allocate $25 million specifically for telecommunications infrastructure development, in Eastern Europe and the Soviet Union. The President, Secretary of State and Secretary of Commerce have publicly stated that modern telecommunications infrastructure is critical in these countries to stimulate political and economic reform. However, U.S. telecommunications companies are still restricted by export controls from providing current modern technology for civilian telecommunications use.

Clearly, our export control policy does not adequately support our geopolitical and foreign policy goals. The fundamental assumptions that shaped our export control policies for the past 40 years have been challenged. Bold initiatives for reform are required by the U.S. to match and sustain the bravery that has been demonstrated in recent months in Eastern Europe.

Unfortunately, the U.S. response to the challenge has been recalcitrance and an unquestioning support of a system that was developed when the U.S. industry was technologically preeminent and the sole supplier of many advanced products and technology. Today, that is no longer the case. In the last five years, U.S. marketshare for electronics products and systems has dropped by about 30 percent.

REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

As illustrated above, we must recognize that promoting both U.S. security and exports are not inconsistent. The American Electronics Association believes it is time for fundamental reforms to the export control system. We can no longer tinker at the edges of the system but must address the core premises on which our system is based. AEA has a statement outlining our goals for the Reauthorization of the Export Control Act which I would like to submit later for the record. Let me just briefly summarize the points today:

1. Recognize in the EAA the right to export. We must recognize that promoting both U.S. security and exports are not inconsistent. An effective control system will be narrowly focused on only those few items whose direct and immediate acquisition would pose a significant threat to the national security of the United States. Beyond this, the system would be oriented toward a presumption that all exports for civil/commercial uses are legitimate, unless a direct threat to security is identified and documented.

2. Establish clear responsibility and final authority in the Commerce Department for the full administration of the export controls system governed by the EAA. While section 5 of the Act gives Commerce authority, such authority is diminished through other provisions and executive orders. In many instances Commerce must seek concurrence of other agencies before it can take action on a specific issue. In effect, these provisions give other agencies de facto veto power. Under current statute, authority is so diffused, that there is no accountability nor final decision authority. Any provision of the Act that requires concurrence or allows veto authority to be exercised by another agency should be eliminated.

3. Elimination of all license requirements, without exception, for exports to and among COCOM allies. We believe that if our multilateral control system is going to be effective, we must have trust in the integrity of other member countries' export control systems. If we do not, we question the commitment to and effectiveness of the multilateral system. A specific deadline should be established in the EAA for elimination of all requirements for exports to and among COCOM member countries. This deadline is increasingly important as the deadline for European Community's unification approaches.

4. Eliminate U.S. reexport requirements for exports from COCOM. The U.S. reexport requirements for exports from of COCOM are redundant. For a reexport of a controlled item from

COCOM, the U.S. requires prior U.S. authorization. This requirement is in addition to the requirement for a license from the COCOM government for export.

5. Significant liberalization for Eastern Europe and possible the Soviet Union. AEA has developed an eight-point plan for liberalizing export controls to Eastern Europe and the the Soviet Union (submitted as a supplement to the testimony). While this plan focuses on the multilateral system, we would note that liberalization of the multilateral controls for exports to Eastern Europe and the Soviet Union will do little if the U.S. system is not reformed, specifically along the lines we have outlined here.

6. Significant Streamlining of the List must occur if we are to maintain an effective and enforceable control system. This can be done in several ways. First, Congress should mandate that the U.S. control lists be harmonized with the COCOM industrial list. Then, Congress should strengthen current indexing provisions in the Act, clarify and improve the foreign availability provisions, and provide for sunsetting of items on the list.

7. As a corollary, the U.S. process for development of U.S. proposals for COCOM must be clearly established and Commerce must have clear authority over the list review process. Section 5(c) of the EAA grants considerable power to the Commerce Department for formulating U.S. proposals in COCOM. However, the lead for negotiating COCOM positions and for

State. As the agency charged with implementation of the Export Administration Act, it is imperative that Commerce have control over the list review process to ensure compliance with the mandate and intent of Congress. It is our experience that Commerce's leadership and control have been challenged on the basis of the State Department's historical role in foreign diplomatic relations. However, there is precedent for other agencies to lead delegations. For example, the USTR leads all trade negotiations and delegations in consultation with the appropriate agencies.

Additionally, in the 1988 Omnibus Trade and Competitiveness Act, Congress recognized the critical role of industry in the list review process. However, U.S. industry input is still severely limited in the interagency process. and is also fragmented between the Technical Working Groups (TWGs) and the Technical Advisory Committees (TACs). This should be corrected by ensuring industry's role on the negotiating team at COCOM and by establishing Commerce authority over the list review process to ensure that industry viewpoints are channeled by the TACs through the list review process.

8. Establish clear jurisdictional authority for dual-use items in Commerce and provide for an adequate dispute resolution process for commodity classifications. Companies should not be placed in a situation of not knowing who has authority to license their products. A system in which responsibility is unclear places companies at risk of unknowingly violating U.S. export control laws -- even after being advised by a government agency as to level of control.

In conclusion, AEA commends the Committee for its efforts in this area and recommends the Senate enact aggressive reforms to the Export Administration Act. Thank you, Mr. Chairman, I'll be happy to answer any questions.

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SUPPLEMENT TO THE
AMERICAN ELECTRONICS ASSOCIATION TESTIMONY
ON THE
REAUTHORIZATION OF THE EXPORT ADMINISTRATION ACT

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL FINANCE

AND MONETARY POLICY

BANKING AND URBAN AFFAIRS COMMITTEE

UNITED STATES SENATE

MARCH 28, 1990

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POLICY STATEMENT ON EAST-WEST TRADE

The dramatic political events unfolding in Eastern Europe have created an unprecedented opportunity for the U.S. electronics industry to participate in the economic rebirth and restructuring of that region. While financial help to Eastern Europe may ameliorate some of their immediate difficulties, the economies of these countries can only survive and prosper if their civil and commercial infrastructure is modernized along western lines. Although industry is under no illusion that Eastern Europe will provide quick and easy profits, the long term potential of that market cannot be ignored.

Our companies will face intense foreign competition to establish a toehold in the newly-emerging East European and Soviet markets. To effectively compete, we must have a comprehensive approach in establishing normal relationships with these countries, including an overall trade and investment package. The United States has already identified a significant framework for technical, economic, trade and investment program for Poland and Hungary in the Support for Eastern Europe Development (SEED) Act. This program identifies specific sectors -- banking, telecommunications, agriculture and transportation -- that will be essential to the development of the infrastructure of these countries.

As an appropriate recognition of the developments in the USSR and Eastern Europe and the challenges posed by a truly global economy, the American Electronics Association strongly recommends a major review and reform of all U.S. economic and trade policies vis-a-vis these nations to enhance America's competitiveness in these markets. AEA's legislative trade priorities are crafted to enable American companies to seize new export, trade and joint venture opportunities in the Soviet Union and Eastern Europe.

Export Controls

AEA recommends that the Administration recognize that increased exports of high technology can be a valuable component to further U.S. geopolitical goals. Recent events have unequivocally shown the importance of information technology in facilitating political and social change. Therefore, rather than fearing exports of such technology as a potential threat to national security, the United States Government should promote such exports as means to further the democratization of previously closed countries. The free flow of information within those countries is an essential ingredient of economic and political reform.

Further, if American firms are even to be in the running for market opportunities in the Soviet Union and Eastern Europe, it is imperative that the United States take the lead in aggressively seeking a liberalization of COCOM constraints on exports to these nations. Only through a truly multilateral export control efforts, such as COCOM, can the U.S. truly protect its national security interests, while ensuring that American companies are not competitively disadvantaged.

The American Electronics Association believes that the United States must act, in concert with our COCOM allies, to establish clear guidelines to govern exports to the Soviet Union and Eastern Europe. Given that events have changed so rapidly, we recognize the need for prudence and we support the initial work of the U.S. in its recent proposal to COCOM. However, failure of the United States to exercise leadership could lead to the de facto demise of COCOM through unilateral actions by individual countries -- this would only serve to undermine U.S. security and commercial interests.

If we are to succeed in preserving COCOM, there are certain principles that must guide U.S. policy decisions. First, we must recognize that it is in our national interest to promote the economic and political reform of these nations. Second, we must recognize that the nature of the threat has changed. Consequently, the likelihood for diversion of sensitive technology and the risk imposed by such is diminished. Third, the COCOM system must have flexibility to respond to changing circumstances. Fourth, there must be a substantial reduction of the COCOM and U.S. control list. Fifth, we must work in concert with our allies. Any controls must enjoy the full and complete commitment of our COCOM allies.

Therefore, we recommend the following:

1. Review of the criteria for determining a "controlled country" as well as the status of currently controlled countries, making adjustment as necessary.

2. Establish a predictable and equitable licensing process procedure that will accommodate short and long-term projects. Such a process would involve a presumption of approval based on the following:

    -- civil/commercial application of the items proposed for export is well established in the west.

    -- items proposed for export are reasonable for the stated end-use/end-user.

-- risk of diversion is reasonably limited and can be verified by any of the following means: (a) the inherent functional limitations of the equipment, (b) circumstances such as verifiable dedication to the stated end use, (c) random on site inspection, (d) adequate computer logs or software access controls, (e) western participation in the management or operation of the application.

3. Establish a "green line" for Eastern Europe and potentially the Soviet Union similar to the green line existing for the People's Republic of China. For example, rather than the existing green line for ECCN 1565 computer products there should be a decontrol up to PDR of at least half the green line (approximately 275 PDR, 33 Mhz), presumption of approval (under circumstances listed in item 3) up to a level that is roughly double the PRC green line (approximately 1100 PDR), and favorable consideration of general exceptions exports meeting criteria listed above.

4. Extend current liberalization to additional ECCNs to ensure that equally significant products and sectors are not discriminated against.

5. Additionally, identify industry sectors (see attached) that will be eligible for approval of higher level technology with appropriate safeguards as agreed to in COCOM. In identifying sectors, there must be consistent liberalization to additional ECCNs to ensure that approved projects can be successfully complete.

6. Focus the multilateral safeguard plan on the "general exceptions"-level technology to maximize security and yet enable exporters to compete equally with our West European and Pacific Rim competitors for exports of national discretion and favorable consideration items.

7. Establish special and bulk license authorities for Eastern Europe and the Soviet Union.

8. Establish general license authority for trade shows in Eastern Europe and the Soviet Union allowing the display and demonstration of goods and technology at the general exceptions level. Such a license would only require prior notifications to the U.S. Government, but it would require the exporter to retain possession of the products and accept responsibility for its return.

Jackson-Vanik Amendment

AEA supports a repeal of the Jackson-Vanik Amendment to the 1974 Trade Act in order to extend Most-Favored-Nation trade status to the Soviet Union. We recognize that a repeal offers more in symbolism than in substance, and realistically cannot be expected immediately to produce a significant increase in trade between our two countries. However, since its enactment in 1974, this provision has become a festering sore in Soviet-American relations. A repeal of Jackson-Vanik would provide tangible evidence to Moscow of our desire to engage in a serious trade and commercial relationship.

U.S. Trade Agreement with USSR and Eastern European Countries

The extension of Most Favored Nation trade status to the Soviet Union cannot take effect until a new United States-Soviet trade agreement has been ratified. The Soviets nullified the previous agreement of October 1972 in response to the enactment of the Jackson-Vanik rider. The AEA urges the President to place significant priority on the negotiations, with an eye toward achieving the conclusion of a new agreement by late Spring.

The agreement should be consistent with the principles set forth in the 1974 Trade Act, which require that the agreement contain provisions authorizing a suspension for national security reasons, safeguarding domestic markets from trade disruption, protecting patent rights, arranging for settlement of disputes, and consultation.

[illegible]

EASTERN EUROPEAN INDUSTRIES AND APPLICATIONS

MEDICAL

Screening, monitoring, diagnosis, treatment, hospital administration, hospital building controls, etc.

TELECOMMUNICATIONS

Telephone systems, cellular systems, etc. This and other public utilities use computer systems for subscriber management, billing, customer service scheduling, spare parts inventory, maintenance scheduling, testing, etc.

PUBLIC TRANSPORTATION

Railways, subways, buses, trams, airports, etc. Applications include reservations, ticketing, scheduling, maintenance administration, etc.

POWER GENERATION

Power stations/substations, district heating, nuclear power plants, etc. Applications include process control, safety and training, grid management, load balancing, etc.

FINANCIAL

Banking, etc. Applications include retail banking, loan management, interbank funds transfer, trust management, administration, etc.

PROCESS CONTROL

Oil refining, oil and gas exploration, pulp & paper, mineral fertilizer, glass production, chemicals, power generation, etc. These industries also require safety and training, maintenance, and inventory control, in addition to the primary task of process automation.

PUBLIC ADMINISTRATION

Tax systems, social welfare, census, municipal planning, highway administration, etc.

EDUCATION AND SCIENTIFIC RESEARCH

Universities and institutes. Application include research, library management, course scheduling, physical plant maintenance, administration, building maintenance controls, etc.

ENVIRONMENTAL

Water and sewage treatment, recycling, waste management, air quality, etc. These industries involve process control, plant maintenance, municipal planning, etc.

Senator **Sarbanes**. Mr. Ryan, we would be happy to hear from you. You're a senior attorney with Hewlett-Packard Co. and I take it you are speaking for the Computer and Business Equipment Manufacturers Association.

STATEMENT OF MARK RYAN, SENIOR ATTORNEY, EXPORT LICENSING, HEWLETT-PACKARD CO.; ON BEHALF OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. **Ryan**. Chairman Sarbanes and members of the subcommittee, I am pleased to present the views of the Computer and Business Equipment Manufacturers Association, otherwise known as CBEMA, on the pending reauthorization of the Export Administration Act.

We commend you for holding these hearings on the EAA and we have been following with interest the introduction of such bills as S. 2113, and the introduction of S. 2207. We are aware that other members of this subcommittee intend to propose changes to the EAA and we look forward to studying those proposals as well.

CBEMA represents the leading edge of the American computer, business equipment, and telecommunications industries. Our members had combined sales of more than $250 billion in 1989; about half of those products involved in these sales were subject to U.S. export controls.

CBEMA members are committed to keeping sensitive goods and technology out of the wrong hands. We are also mindful of Deputy Secretary of State Eagleburger's recent statement that our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century.

CBEMA basically has four recommendations. CoCom license-free zone; streamlining CoCom controls; improvements in foreign availability determinations; and streamlining the U.S. system.

CBEMA enthusiastically supports the creation of a license-free zone for trade within CoCom By license-free zone, we mean the same treatment afforded to exports to Canada. That is, no validated licenses, no notification to the U.S. Government other than the standard requirements for Shipper's Export Declarations, no certifications, no written assurances, and no exclusion of products or destinations.

The elimination of European Community border points is scheduled for the end of 1991, less than 22 months away. The Community is on the verge of making a CoCom license-free zone a reality, with or without the concurrence of the U.S. Government. The time has come to mandate the removal of licensing and other requirements for exports to our closest allies.

In light of the dramatic developments in Eastern Europe, we need to make fundamental streamlining changes in export controls. The existing mechanisms for streamlining—regular CoCom list review and the foreign availability process—are designed to be gradual, and therefore, slow. CBEMA would like to offer several proposals to respond to change in Eastern Europe.

First, we advocate a new control level incorporating a strong presumption of approval for countries in Eastern Europe that have demonstrated a commitment to democratic and economic reforms, as well as to safeguarding against diversions. For these countries to have the midrange computer capability necessary for economic development, we recommend that this new control level extend to twice the current China green zone, a PDR of 1100 for computers and comparable levels for other electronic equipment. By "strong presumption of approval," we mean that, as with the current China green zone, export license applications for equipment in this range would not be subject to interagency review in the United States or referral to CoCom. They would be reviewed only by the Commerce Department for appropriate civilian end-use and reasonable assurances against diversion.

Second, as the administration and Congress decide it is prudent to reduce the United States armed forces necessary to ensure our national security, it is appropriate to also reduce the extraordinarily stringent constraints we have maintained on trade with other Eastern European countries and the Soviet Union. Thus, for other Eastern European countries and the Soviet Union, CBEMA urges establishment of a new control level that would also incorporate a strong presumption of approval up to the limits of the current China green zone. For example, a processing data rate for computers of 550 and equivalent levels for test and measurement equipment. This level would not involve interagency or CoCom review.

We recommend that the decontrol level for these countries be set at a limit which is double the current favorable consideration level—i.e., setting G-DEST at double the current note 12 level of 78 to 156, plus decontrol of all 80386-based personal computers. This could be accomplished through CoCom list review, but current United States executive branch proposals to CoCom are well below this level. In our view, only a commitment and directive from Congress can achieve these ends.

Finally, we need to wipe the slate clean entirely for at least some areas of technology. CBEMA believes that the best candidate for this kind of bold initiative is the telecommunications sector for commercial and civilian applications, with banking, medical equipment, environmental protection and transportation also easily justifiable for this purpose. If the United States does not take these kinds of bold initiatives, it is likely that one or more of our CoCom partners will do so in practice, leaving United States industry once again at a competitive disadvantage.

Briefly, on foreign availability, the EAA contains extensive foreign availability provisions. The provisions added by the 1988 Trade Act have helped somewhat, but foreign availability determinations for both control list and licensing still take too long.

As far as streamlining the United States system, CoCom, while not perfect, is not the major impediment to United States exports to East Central Europe and the Soviet Union. Our handicaps are in the U.S. process for developing proposals for CoCom controls, and in the U.S. process for reviewing license applications for East-West trade.

It is in the bread and butter review of United States export applications that the individual and cumulative effect of delays, restrictive licensing conditions and denials are so economically harmful.

Time is perhaps the biggest U.S. export problem. In many cases, the system just takes too long. In an effort to further avoid disputes that snarl the system and drag out the issuance of licenses, CBEMA favors the consolidation of all license applications in the Commerce Department. This would limit the State Department role to making actual licensing decisions for munitions items. CBEMA also believes a process should be put in place whereby dual-use products and technologies are controlled only under the commodity control list, and not under the munitions list.

To summarize, CBEMA strongly favors establishment of a CoCom license-free zone, streamlining of CoCom controls, improved U.S. foreign availability procedures, and a much more streamlined process for both U.S. control list development and U.S. review of export applications for East-West trade.

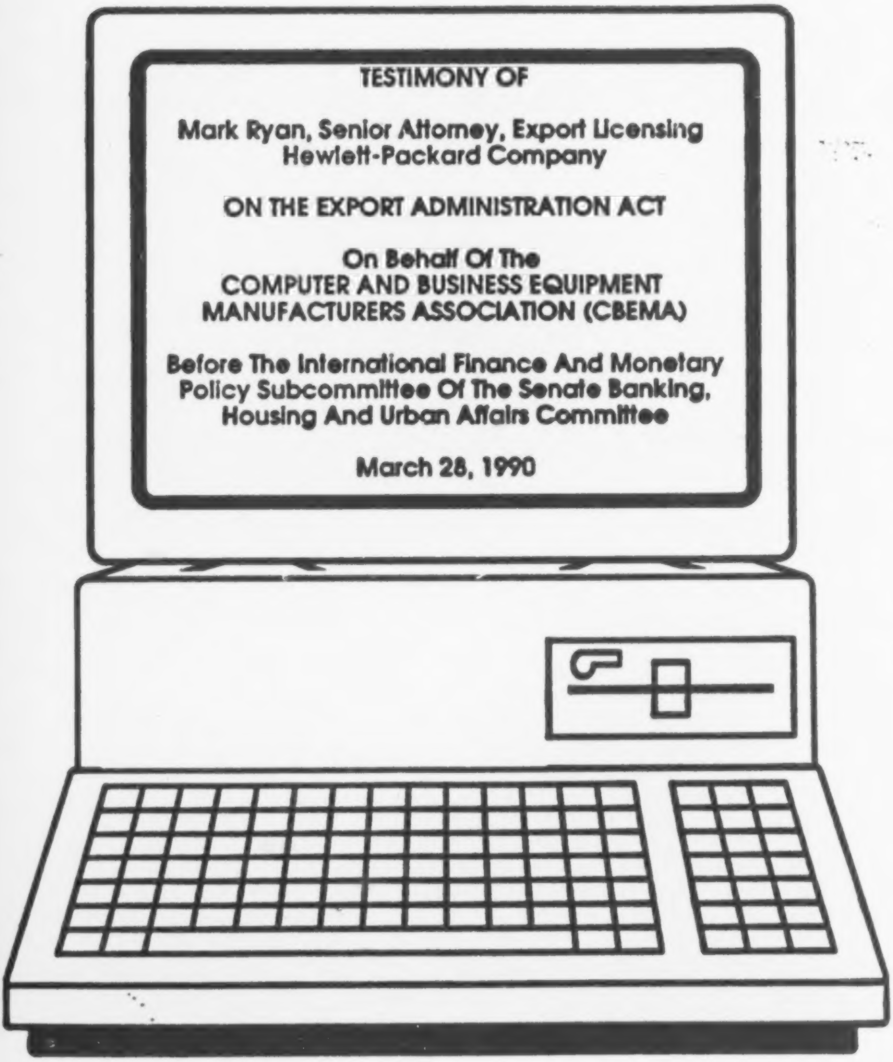
As Mr. Burck did, I have what I consider to be an example of what's occurred for Hewlett-Packard Co. Again, this is Hewlett-Packard, not CBEMA.

And example of what occurred to us and what is wrong with the system in our view. In about the fall of this year we discovered that some of our CoCom competitors were selling oscilloscopes. Hewlett-Packard makes digital oscilloscopes and some of our competitors were selling them to the Eastern bloc and the PRC because they had convinced their governments that the level of decontrol—their oscilloscopes were not controlled by existing regulations. Once we discovered that, of course we went to the Commerce Department and said, "What about this? We're currently at a level of 50 megasamples per second and these people are selling oscilloscopes at 250 on a decontrolled basis."

To the credit of the Commerce Department, they did discuss this with our CoCom allies and tried to get some sort of resolution, but as things go in the export licensing arena, time keeps trudging on while there has been no resolution. As far as when the Department of Defense was asked for their views, basically they raised the talisman of MCTL and said 50 is the limit, that's what it should be. Speaking of the Department of Defense, they continued to object to a case that we had pending for an application for a trade show for oscilloscopes to China. As you might recall, legislation in the 1988 act said that there would be a presumption for approval for all trade shows regardless of the level of technology. They continued to deny our application for a trade show to PRC. They denied this all the way up until the Commerce Department just recently, about 2 weeks ago, decided that it was appropriate to decontrol oscilloscopes to 250.

Thank you very much, Mr. Chairman.

[The complete prepared statement of Mark Ryan follows.]



TESTIMONY OF

Mark Ryan, Senior Attorney, Export Licensing
Hewlett-Packard Company

ON THE EXPORT ADMINISTRATION ACT

On Behalf Of The
COMPUTER AND BUSINESS EQUIPMENT
MANUFACTURERS ASSOCIATION (CBEMA)

Before The International Finance And Monetary
Policy Subcommittee Of The Senate Banking,
Housing And Urban Affairs Committee

March 28, 1990

Computer and Business Equipment Manufacturers Association
311 First Street, N.W., Suite 500 Washington, D.C. 20001 202/626-5736

Chairman Sarbanes and Members of the Subcommittee, I am pleased to present the views of the Computer and Business Equipment Manufacturers Association (CBEMA) on the pending reauthorization of the Export Administration Act (EAA).

We commend you for holding these hearings on reform of the EAA and we have been following with interest the introduction of such bills as S. 2113, the "Central and Eastern Europe Investment and Export Enhancement Act of 1990," by Senator Heinz, a member of this subcommittee, and the introduction of S. 2207, the "Export Administration Reform Act of 1990," by Senator Cranston, a senior member of the full Banking Committee. We are aware that other members of this subcommittee intend to propose changes to the EAA and we look forward to studying those proposals as well.

CBEMA represents the leading edge of the American computer, business equipment and telecommunications industries. Our members had combined sales of more than $250 billion in 1989; about half of the products involved in these sales were subject to U.S. export controls.

CBEMA's members are committed to keeping sensitive goods and technology out of the wrong hands. We are also mindful of Deputy Secretary of State Eagleburger's recent statement that "our economic health and our ability to trade competitively on the world market may be the single most important component of our national security as we move into the next century."

COCOM LICENSE-FREE ZONE

High on CBEMA's list of priorities for this year's reauthorization of the EAA is the elimination of national security export controls within CoCom. Ninety percent of United States international trade is with the 16 other members of CoCom and virtually all export license applications for CoCom destinations are approved by the U.S. Government. A fundamental fact is that the U.S. Government's resources, including funds for enforcing the export control laws, are limited. Maintaining restrictions on exports to CoCom means that we are allocating scarce resources for controlling sales to our closest allies rather than sales to our potential adversaries.

CBEMA enthusiastically supports the creation of a license-free zone for trade within CoCom. Indeed, the 1988 Trade Act added a new section 5(b) (2) (C) to the EAA, prohibiting controls on exports from the United States to any CoCom or "cooperating country"* that is "implementing an effective export control system." In attempting to implement this section, we understand that the Administration has opted to carry out CoCom-wide negotiations rather than pursue country by country discussions of a license-free zone. However, we believe these negotiations are taking too long and, in our view, the delay in realizing concrete solutions is eroding U.S. credibility with our CoCom allies.

We support mandating a specific date for a CoCom license-free zone. By "license-free zone" we mean the same treatment afforded exports to Canada. This treatment was the intent of Congress in the 1988 Trade Act. That is - no validated licenses, no notification to the U.S. Government - other than the standard requirements for Shipper's Export Declarations - no certifications, no "written assurances," and no exclusion of products or destinations. The current Administration draft on intra-CoCom trade falls short of creating a license-free zone, and in fact satisfies none of these criteria. Indeed the draft regulations would place U.S. exporters at a competitive disadvantage.

The elimination of European Community border points is scheduled for the end of 1991--less than 22 months away. However, the Executive Branch appears unable to conform the U.S. export control system to that event even though Congress intended this in enacting section 5(b)(2)(C) in the 1988 Act. CBEMA believes the Congress should set a date certain - not later than December 31, 1991 - to end U.S. export licensing for shipments to CoCom or cooperating countries. If the end of 1991 draws near and the U.S. Government can demonstrate that its best efforts have not produced an adequate level of enforcement, this subcommittee and the Congress should act as necessary to protect our national and economic security.

The European Community is on the verge of making a CoCom license-free zone a reality - with or without the concurrence of the U.S. Government. The time has come to mandate the removal of licensing and other requirements for exports to our closest allies. This action would help our balance of trade and, by refocusing our resources on exports to countries that truly might pose a military threat to the United States, enhance enforcement as well.

STREAMLINING COCOM CONTROLS

The failure of the U.S. Government and its CoCom allies to streamline the Commodity Control List has been truly disappointing. In short, it is our view that the U.S. Government should limit controls to truly significant items. Excessive controls impose needless regulatory requirements on exporters and their customers. They also waste enforcement funds and time and effort on goods that are relatively unimportant from a strategic standpoint. Further, the success of our export control system depends largely upon voluntary compliance. A grossly overbroad control list breeds disrespect for the system and this can only erode compliance.

In light of the dramatic developments in Eastern Europe, we need to make fundamental streamlining changes in export controls. The existing mechanisms for streamlining - regular CoCom list review and the foreign availability process - are designed to be gradual, and therefore, slow. CBEMA would like to offer several proposals to respond to change in Eastern Europe.

First, we advocate a new control level incorporating a strong presumption of approval for countries in Eastern Europe that have demonstrated a commitment to democratic and economic reforms, as well as to safeguarding against diversions. For these countries to have the mid-range computer capability necessary for economic development, we recommend that this new control level extend to twice the current China Green Zone - a PDR of 1100 mb/s for computers - and comparable levels for other electronic equipment. By "strong presumption of approval," we mean that, as with the current China Green Zone, export license applications for equipment in this range would not be subject to interagency review in the U.S. or referral to CoCom. They would be reviewed only by the Commerce Department for appropriate civilian end-use and reasonable assurances against diversion.

Second, as the Administration and Congress decide it is prudent to reduce the U.S. Armed Forces necessary to ensure our national security, it is appropriate to also reduce the extraordinarily stringent constraints we have maintained on trade with other Eastern European countries and the Soviet Union. Thus, for other Eastern European countries and the Soviet Union, CBEMA urges establishment of a new control level that would also incorporate a strong presumption of approval up to the limits of the current China Green Zone - for example, a processing data rate (PDR) for computers of 550 mb/s, and equivalent levels for test and measurement equipment, computer peripherals, and related equipment. This level would not involve interagency or CoCom review.

We recommend that the decontrol level for these countries be set at a limit which is double the current Favorable Consideration level (i.e., setting G-DEST at double the current Note 12 level of 78 to 156, plus decontrol of all 80386-based personal computers). This could be accomplished through CoCom list review, but current U.S. Executive branch proposals to CoCom are well below this level. In our view, only a commitment and directive from Congress can achieve these ends.

Finally, we need to "wipe the slate clean" entirely for at least some areas of technology that are fundamentally civilian in application and that will facilitate and directly support democratic institutions in Eastern Europe and the Soviet Union. CBEMA believes that the best candidate for this kind of bold initiative is the telecommunications sector for commercial and civilian applications, with banking, medical equipment, environmental protection and transportation also easily justifiable for this purpose. The U.S. has long pressed for freedom of communication and travel for the oppressed people of the Warsaw Pact nations. Such freedom is now politically possible. However, as a practical matter, open communication and travel cannot be fully realized without the necessary infrastructure.

Freedom of communication and travel between East and West - the heart of our long-standing human rights policy - cannot be accomplished without linking Eastern and Western infrastructures. For such a linkage, we need to provide telecommunications equipment to Eastern Europe and the Soviet Union that is technically comparable and compatible with our own. The bill introduced by Congressmen AuCoin and Frenzel have introduced legislation, H.R. 4101, which proposes this type of surgical elimination of export controls for telecommunications products and services. Having demanded strong human rights reforms for Eastern Europe and the Soviet Union for the past four decades, Congress should now take the leadership and the initiative to solidify those rights by freeing the telecommunications equipment that will make it practical for people to exercise them fully.

Finally, these three forms of streamlining are necessary for competitive reasons. If the U.S. does not take these kinds of bold initiatives, it is likely that one or more of our CoCom partners will do so in practice, leaving U.S. industry once again at a competitive disadvantage that we can ill afford with our present massive trade and budgetary deficits.

Again, given the developments in Eastern Europe - including the prospect of German reunification which could function as unilateral decontrol on the part of a significant CoCom member - we need to make fundamental streamlining changes in export controls.

FOREIGN AVAILABILITY

In addition to the foregoing, our government needs to recognize on a timely basis the degree to which there is "foreign availability" for certain products. Instances like the wafer saw case demonstrate the importance of foreign availability.

The EAA contains extensive foreign availability provisions. The provisions added by the 1988 Trade Act have helped somewhat, but foreign availability determinations for both control list and licensing still take too long and still fail to respond to Congress' intent not to penalize U.S. exporters when comparable products are available to their customers from non-U.S. commercial sources.

Section 5(g) of the EAA provides for annual indexing of performance level thresholds of the Control List. Unfortunately, section 5(g) is optional** and never has been implemented by the Department of Commerce. Even were section 5(g) mandatory, compliance would be difficult to enforce because the provision contains no standard for deciding whether, or by how much, the technology levels of controlled items should be raised.

STREAMLINING THE U.S. SYSTEM

CoCom, while not perfect, is not the major impediment to U.S. exports to East Central Europe and the Soviet Union. Our handicaps are in the U.S. process for developing proposals for CoCom controls, and in the U.S. process for reviewing license applications for East-West trade.

Section 5(c) of the EAA seems to grant considerable power to the Commerce Department for formulating U.S. proposals to CoCom. However, our perception is that leadership and control in this area has been delegated to other departments within the U.S. government. The difficulty the U.S. government has had in moving control issues through internal channels has resulted in proposals that are perceived by our allies as "too little, too late."

But it is in the "bread and butter" review of U.S. export applications that the individual and cumulative effect of delays, restrictive licensing conditions and denials are so economically harmful. To a large degree, these problems are the result of the existing interagency referral process, and of the inability to quickly resolve interagency differences.

Time is perhaps the biggest U.S. export problem - in many cases the system just takes too long. Given the speed that today's automation can provide, the existing statutory allowances (Sec. 10 of the EAA) should be shortened. And, in an effort to add more certainty and timeliness to the export control process, CBEMA supports the establishment of an interagency dispute resolution mechanism which provides for accountability, time limits, Congressional oversight, and an exporter "right to know" provision. CBEMA would also like to see the interagency dispute resolution process streamlined by using established criteria for consultation and referral.

For cases below the CoCom "general exception" level , CBEMA believes that exporters should have the certainty that export licenses will be issued when certain criteria are satisfied. Criteria to be considered should include: West-West foreign availability, end-user safeguards and consignee reliability. Referrals to other agencies in cases that are below the "general exception" level could be reduced by giving Commerce the authority for these cases.

In an effort to further avoid disputes that snarl the system and drag out the issuance of licenses, CBEMA favors the consolidation of all license applications in the Commerce Department. This would limit the State Department role to making actual licensing decisions for munitions items. CBEMA also believes a process should be put in place whereby dual-use products and technologies are controlled only under the Commodity Control List, and not under the Munitions List.

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To summarize, CBEMA strongly favors establishment of a CoCom license-free zone, streamlining of CoCom controls, improved U.S. foreign availability procedures, and a much more streamlined process for both U.S. control list development and U.S. review of export applications for East-West trade. We also believe that the time it takes to issue an export license in a responsible manner has a direct impact on U.S. competitiveness in the international marketplace.

CBEMA and its members thank you for your concern about these pressing competitive issues. I will be happy to respond to any questions you may have. Thank you.

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* Section 5(k) of the EAA provides for CoCom-type bilateral export control arrangements between the United States and countries that do not belong to CoCom. The two nations that have been granted "full" status under section 5(k) are Finland and Switzerland.

** "[R]egulations issued by the Secretary [of Commerce] may, where appropriate, provide for annual increases in the performance levels of goods or technology." (Emphasis added.)

Senator **Sarbanes**. Thank you.

We have been joined by Senator Kerry. Do you have an opening statement?

Senator **Kerry**. No, thank you, Mr. Chairman. I appreciate the opportunity to be here.

Senator **Sarbanes**. In view of the number of members present, I think we will move to a 5 minute round of questioning and then we can come back for a second round.

Senator **Heinz**. Just a procedural question, Mr. Chairman. We are going to have a vote at 11:30. Is it your intention to come back here after that?

Senator **Sarbanes**. Yes.

Senator **Heinz**. This is a very good panel.

Senator **Sarbanes**. Yes, it is a good panel. We are pleased to have them here.

Mr. Hough, I want to ask you and Mr. Burck and Mr. Ryan, just to be very clear on the record, do any of you take issue with the necessity to have some export controls with respect to high technology that's usable for military purposes?

Mr. **Hough**. Absolutely not.

Senator **Sarbanes**. You agree with that?

Mr. **Burck**. I absolutely agree. Of course, we do recognize the need for controls on sensitive technology. It's just a question of clear and definitive criteria as to what those controls will be and how they shall apply. Further, it should not take 10 years or so to review the controls as well. We should have a system that allows for constant review and allows questions to be answered quickly, with full consideration of proper safeguards.

Mr. **Ryan**. I would agree. Of course, none of us object to any kind of controls for the military significant type things. Of course, the definition of military significance is sometimes difficult to achieve.

Senator **Sarbanes**. It's all a matter of defining it. None of you take issue with the basic principle, is that correct?

Mr. **Ryan**. Absolutely not.

Senator **Sarbanes**. Now do you think the Department of Commerce has the expertise and the military understanding to be able to rule alone on the potential military use of technology with the Defense Department totally excluded from the process?

Mr. **Ryan**. Well, sir, I don't think the Defense Department can be totally excluded from the process.

Senator **Sarbanes**. OK. That's all I need to know.

Now, Mr. Burck?

Mr. **Burck**. I agree that Defense cannot be excluded. However—I do not think Defense should be allowed to second guess every licensing decision. The interagency process that presently exists does not work well. No one knows where one agency takes off and the other begins. I think we need to have a coherent effort.

Senator **Sarbanes**. And, of course, you could put it all in Defense as well as put it all in Commerce.

Mr. **Burck**. I don't think that that's the purpose of exportation, is to control it by Defense.

Senator **Sarbanes**. Well, but I thought we agree that we are trying to balance two considerations here. One is exporting. We want that to take place. And the other is to protect national security.

Now we have one agency, Commerce, which is perceived as the agency that wants to push exporting. We have another agency, Defense, that's perceived as the one that wants to protect national security.

Now if we're going to put it in only one place, it seems to me you can argue for one or the other. It depends.

Mr. **Ryan**. I think our point is basically once the policy is established that there should be one agency. I think the interagency wrangling afterwards in the case processing is some of the difficulty that we face. Once the policy is established, then, yes, put it in one agency; and we would prefer to see Commerce as the agency because they are much more efficient in our view in processing applications.

Senator **Sarbanes**. But who would be making the policy decision? That judgment would be made by both agencies somehow or other, with the input of both. Is that correct?

Mr. **Burck**. Yes, but I'm not sure it has to be done through the current interagency process. Why couldn't there be a consulting process where Defense would in fact consult and advise Commerce, without having the formal veto over the process? I believe that having the current interagency system means that there are several masters and no one can make a decision. They defer decisions and then try to take it all the way up the executive level to the cabinet level and it's not working.

Senator **Sarbanes**. Of course, we tried to deal with that in the last bill. We in effect loaded it toward Commerce because we said that if Defense didn't—there was a complaint that Defense would get these things and not respond and simply hold them. There was an argument about whether that was happening. Defense denied it.

But in any event, what we finally said is, well, if Defense doesn't reply within a limited period of time, Commerce can move ahead. If Defense applies and disagrees, then it goes to the President who has to decide again within a limited period of time or Commerce can move ahead.

So there was an effort to structure the system to move it, but still get the input. Well, we'll address that.

Let me ask you this question. Have your organizations made a presentation to the administration about the changes that should be made in the system, and how and when was that done? Because the administration could completely rewrite the existing export regime. They have full authority under the legislation.

Now you are in effect here asking the Congress to do it and that's one of the burdens we carry, but I'm interested to know how much you've done to try to get the administration to rewrite it.

Mr. **Burck**. We have talked to each Department, Commerce, State and Defense. I know the AEA has and I have as an individual in my company.

Senator **Sarbanes**. Talked to——

Mr. **Burck**. Talked to various members and policy decision makers at each level.

Senator **Sarbanes**. How high in the Departments have you gone?

Mr. **Burck**. To the strategic decision makers, policy makers, in each one.

Senator **Sarbanes**. Have you reached the level of the Cabinet Secretary?

Mr. **Burck**. No. The Under Secretary level is as high as we've gone to date.

Mr. **Ryan**. We have at Hewlett-Packard. John Young has sent a letter to Commerce Secretary Mosbacher and specifically outlined what we felt were the needed changes in licensing levels for Eastern Europe, yes. And on a daily basis we are involved with the administration in talking with them on how things should be changed through the technical advisory committees. Hewlett-Packard has members on the technical advisory committees and we've been working very hard to try to change along with the administration.

Yes, we have done that.

Senator **Sarbanes**. Mr. Hough?

Mr. **Hough**. Mr. Chairman, NAM has a working group on export administration and has met with Commerce, State, and Defense officials quite regularly.

Senator **Sarbanes**. At what level? Have you met with the Secretaries?

Mr. **Hough**. Up to the Under Secretary level.

Senator **Sarbanes**. Well, my time has expired.

Senator Mack I think was here first. We will take people in the order in which they came in.

Senator **Mack**. Thank you, Mr. Chairman.

I really find myself being pulled by two very strong feelings. Having spent 16 years in the business world before coming to the Congress, the expressions of frustration and close to anger that I sensed being expressed by you I can understand and I can feel.

On the other hand, I have the concern and the interest in making sure that what we do is in the best interests of this Nation and in our national security.

I have—it was handed to me yesterday—it's referred to as an instructional manual in Russian language for a machine tool and without getting into the details, it says the Oggi Co. apparently is selling directly to the Soviets a machine referred to as EDM, electronic discharge machine, and its capabilities—apparently it can cut on four axes at a one micron accuracy.

Now from what I have been told, that is way above any line that now exists and in some cases goes beyond what even a more liberalized approach would be.

While I certainly understand the need to recognize the change that's taking place in the Soviet Union and in Eastern Europe, I don't believe that we can disregard the risks that still exist in this world. I happen to believe that the Soviets have arrived at a point where this Nation arrived some two or three decades ago, and that is that you can't maintain a large conventional force. We drew that conclusion and said the way we're going to defend this Nation is through our strategic capabilities, which as I understand it requires a high degree of technical capability.

It seems to me that under these conditions we want to be even more careful about the kind of technology that gets into the hands of the Soviets so that they can continue as they are to build their strategic capabilities.

What concerns me as I hear you talk and as the chairman—I don't think he's really suggesting it but he's challenging in a sense—that if we want to streamline it, we can streamline it under the Department of Defense. I'm not sure that would be what you fellows would be inclined to do.

But I think all of us are concerned and I don't know whether any of you are familiar with this transaction or the Oggi Co., but I would be interested in how do we bring together those two things that I say are pulling me apart? How do I really make sure that we develop a system that protects our national security interests and at the same time allows you to do business as you want to do business?

Mr. PERLE. If I could comment briefly, Senator, I am familiar with this particular case and the irony of it is that, as I understand it, the Swiss claim to have been told by the Department of Commerce that it was all right to export this particular equipment because it didn't require a license.

I think the answer to your question is that there must be a balance in the considerations that are brought to bear before decisions are made. You have listened to 4 people this morning testify to the effect that the Department of Defense should be out of the picture, for practical purposes.

Here you have this particular machine tool case where the Department of Defense wasn't consulted and a capricious and, I believe, wrong decision was made with the result that a large number of very sophisticated machine tools have gone to the Soviet Union and are undoubtedly at use producing precisely the Soviet strategic weapons that you referred to.

Senator MACK. Let me just make an additional comment here just so that we put this in the right context.

This machine apparently is used in the development of jet engine components, satellite components, rocket engine components, radar system components, missile guidance systems, surveillance satellite components, and I could go on and on and on.

How do we get the balance?

Mr. FREEDENBERG. May I respond to that? The way you describe it, it's so obviously above the cutoff line that the Commerce Department would either have to be having a micropsychotic episode where they absolutely lose all control of thought processes, or there was complete fraud in this. This is not a tough call. We're not talking about something—four axes would ring a bell; one micron would ring a bell. This is not a tough call. Either we're claiming that the Commerce Department has an absolutely sublevel of intelligence or there's complete fraud in this area. It just can't happen. This is just too gross an example to say that the Commerce Department would make that kind of judgment.

I don't know the case so I can't tell you, but there are times—and we've had them in many countries—where there is fraud involved in the way they describe the machine. That's all I could tell you.

Senator SARBANES. Are you making the assertion with respect to the Commerce Department as to when you were there or generically—the Commerce Department at any time?

Mr. FREEDENBERG. In general, this is not a difficult case if we're talking about one micron. I don't think they have changed that much in the time since I left.

Mr. PERLE. It might assist the committee to have a copy of correspondence signed by Jim LeMunyon on February 12 indicating that the machines in question are not controlled. So it may have been a minipsychotic episode or whatever, but the evidence is rather persuasive that these machines are now being sold. The Swiss claim that they were given approval to do so. That may turn out to be inaccurate upon examination.

But I know this, Senator Mack, that had there been consultations between the Departments of Commerce and Defense over this issue, it is likely that it would have been resolved in a more satisfactory manner.

Senator MACK. I have information that indicates that apparently the decision was made based on pamphlets that were provided from the company. I don't have any knowledge about fraud. I don't really have any knowledge about the internal workings of how the Commerce Department came to the conclusion.

Mr. FREEDENBERG. Just finally, the Swiss, since 1985 when Mr. Perle was involved in the negotiations, have been very cooperative and one of the big advantages we've had in controlling technology, particularly machine tools to the Soviet Union, has been the cooperativeness of the Swiss in these areas.

So I still find it difficult to believe that, with the factors that you have described, I think it's difficult in this hearing context to come to a conclusion that there would be an approval either by the U.S. Government or by the Swiss Government for such a machine tool. They have turned down less accurate machine tools both on their own judgment and on the judgment of the Commerce Department.

Senator MACK. Suffice it to say, though, I think what it raises once again—and I understand the desire of the gentlemen who have testified this morning—about streamlining and about really putting it into the hands of the Commerce Department, but I've got to tell you that raises some real concerns on my part about what would happen from a national security standpoint.

Thank you, Mr. Chairman.

Senator SARBANES. Thank you.

Senator Shelby.

Senator SHELBY. Mr. Chairman, I want to follow-up first on a statement you made earlier basically that we've got to balance our interests between commerce, which we are all interested in selling, and national security, which we have that responsibility to the American people; and how do we do this?

Obviously, it doesn't always work. I can understand the business proponents. They want to sell. They are in commerce. They want to sell just about everything they make. On the other hand, as Mr. Perle has pointed out to me on other occasions, CoCom has worked to a great extent. It's not a total failure. And how does it work? It's denied a lot of our technology and our allies' technology to our adversaries.

But in this new era, will it continue to do this? So how do we balance this? The Swiss company, it's my understanding, following up on some of Mr. Mack's questions, it's my understanding that Japan and West Germany refused to export this same technology believing that it would absolutely violate CoCom rules, whereas the Swiss, which we do not have—we only have an informal agreement with them and they do not belong to CoCom but we've basically had a good arrangement with them—that they are doing this.

My question—and we can't decide that today here—does it violate the Toshiba rule, the 1988 Omnibus Trade and Competitiveness Act, which we pushed from the Congress because of the Toshiba affair, which you all are familiar with—Mr. Freedenberg and Mr. Perle and I assume you other gentlemen—which would bar from the United States, 2 to 5 years from doing any business here with companies that do this. I think it's a real delicate, real sensitive question.

I want to do business and I want the American people to do business as much as they can, but when Commerce issues a ruling in 4 days—that's pretty strong. And it's my understanding that they have very little, if any, dialog going on with the Defense Department regarding things like this.

Mr. Perle, what's your comments on that? What should we do?

Mr. PERLE. Senator Shelby, when you raise the issue, and quite properly so, as to whether there's a violation of the Toshiba rule—if we can call it that—it's worth observing that precisely these same machines are now used at the Waterfleet Arsenal, the Rock Island Arsenal, the Los Alamos Nuclear Labs, the Argonne National Lab, and in a number of other sensitive Defense Department applications.

Senator SHELBY. Very sensitive.

Mr. PERLE. So the question of the military application of this equipment is pretty open and shut.

Mistakes are bound to be made from time to time and it's interesting to reflect on this case because we heard testimony earlier about cases in which the three gentlemen from industry were aggrieved because of the way in which specifics had been handled.

From the point of view of a German or a Japanese manufacturer of this equipment where their Governments prevented them from exporting them, they might listen to this case and testify in a similar situation in exactly the same manner as my colleagues have today, which brings up the point of the difficult business of operating an embargo. Everybody is inclined to think the other fellow is getting an advantage and the only solution for that is integrity in the system.

My own view, having spent a long time in this business, is that if you exclude the Department of Defense from the process, which would have spotted this immediately, you run an increased risk that decisions like this are going to get made.

I understand why they want the Defense Department out, because they would like to sell essentially without limit.

Mr. BURCK. No, that's not the intention.

Mr. PERLE. They will deny that, of course, but the fact is that no matter what the level rises to they will propose a new and increased level. Twice, the China green zone, for example, was a very high level of computer and I think if you ask Mr. Ryan whether there is now in place a control mechanism to protect those technologies, I think he would have to concede there isn't. And yet he's recommending that we move to that level.

Senator SHELBY. Mr. Perle, are we going into a new era of trade where CoCom is irrelevant or is it just as relevant and important as it ever was? It's just a question of how we're going to interpret it and refine it.

Mr. PERLE. I believe it's as relevant as it has ever been. Obviously, we are going to and we should liberalize with appropriate management controls in place. The jury is out on this new era of relations between the United States and the Soviet Union. The Soviets continue to invest a quarter of their GNP in the military.

Senator SHELBY. Has CoCom worked?

Mr. PERLE. Yes, it's worked. The Soviet strategic forces continue to grow and be modernized and we don't want to contribute unwittingly to that modernization.

Senator SHELBY. Mr. Ryan, do you want to comment?

Mr. RYAN. In terms of Mr. Perle comments, our recommendation as far as moving the controls upward is on a case-by-case basis. There would still be a review by the appropriate agency or agencies in Mr. Perle's view.

One of the reasons that we want Commerce to do the processing of the applications is because in a free world situation they process an application normally in three days, 90 percent approval rate type of thing. We have never—this is Hewlett-Packard—we have never, ever experienced a 48-hour turnaround by the Department of Defense. It seems to be in some cases a 60-day never-ending cycle of ask the exporter a question and the response starts the clock running again for another 60 days.

So in terms of why we want Commerce to do it as opposed to Defense, that's essentially our reason.

Mr. PERLE. Because you've got a sweetheart relationship. Who are you trying to kid?

Mr. RYAN. No, it is not our intention——

Senator SHELBY. Do you have some type of internal review system in your companies where you come up with is this really a security violation, or do you just submit it in blank to the Commerce Department? In other words, do you have some questions of your own and say, "Goodness, this is high technology. It's being used so and so. Can we slip it through?" Or do you leave it all internally?

Mr. RYAN. Speaking for Hewlett-Packard again, there have been instances—well, we do not just try to slip things through. In fact, we have instances where we've thought one of the Commerce officials has made a mistake. Clerical mistakes do happen. And we have returned to that person and said, "Did you really understand this and is this what you really meant?" And we have in that case denied ourselves a license.

Senator SHELBY. Well, how do you balance internally in your companies your view and your concern of your country and national security with your concern for exporting and making money? I think that's important.

Mr. RYAN. Well, it is important. We abide by the law and we are trying to get a change in the law and the regulations.

Mr. BURCK. There's no inconsistency between the two positions. I think Mr. Perle has overstated his case and is making a lawyer's brief I suppose.

The position is we are not suggesting that there be no safeguards. We are not suggesting that there be no process review by Defense on matters of expertise. Let them play a critical mass in determining what is strategic and what is not strategic. But once that's done, let it go and not be involved in every case and impede the process of industry.

We are suggesting that there should be safeguards, a continuous role of safeguards, and Defense must be involved.

Within our company, for instance, at Data General, we have engineers who are in fact charged with the responsibility of determining what is this product really going to do, what can it do; and they act as a prophylactic on where this product will go before we even try to submit it to the proper export authorities. We don't rely on the authorities alone to do that for us.

Mr. FREEDENBERG. If I might make one suggestion, perhaps you could get a report on this particular case because I'm not familiar with it. I was handed a note that the difference is whether this is attached to a numerical controller. Since I'm not in the licensing area I couldn't tell you the facts, but it would be very useful for the committee to get a case study of this because it would go exactly to the issue that you're dealing with.

I still find it difficult, although anything is possible, that this sort of thing with these kinds of red lights on it would be just turned around as an approval. So I think that's probably the best way to resolve this.

Senator SARBANES. That's a good suggestion. The committee will take it under advisement.

Senator Heinz.

Senator HEINZ. Mr. Chairman, thank you very much.

There are four issues that you have all touched on one way or another. One is improving the system. Whether it's removing DOD from certain categories of review or reorganizing the system, one or the other of you have touched on it.

Second, it seems to me, and a critical issue, is the question of differentiation between the Soviet Union and the Eastern European democracies.

Third, what I would call influences that may change the world that are beyond our control. German reunification was mentioned by Mr. Ryan and may have been mentioned by others while I was attending the Finance Committee hearing.

Finally, what the impact on our economy, our critical industries, and ultimately our national security may be if we are out of step with everybody else.

On the question of improving the system, I'd like to read a brief quote from the Business Group on Export Administration, which is a 24-member, Fortune 500 group. I think all of you one way or another belong to that. It says:

> Our basic goals are to simplify and streamline the complex process, to create a dynamic system that can make reasonable and timely decisions necessary to adjust

the system to a changing world and to eliminate bureaucratic deadlock. Central to achieving these goals is the need to make decision makers accountable for their actions by clarifying and consolidating authority and responsibility which is now too diffuse.

One way to do that that's been proposed is to abolish the role of the Defense Department in this process. There are others who would go further, but to the best of my knowledge they are not present at the table.

If it proves impractical—and I'll get to the question of that practicality in a moment—to remove DOD from certain categories of license review, would you all favor a different means of achieving accountability, which is to take the turf which each agency now guards so jealously at DOD, at Commerce, at State, and combine all of those responsibilities into one agency with one head who would indeed be accountable?

Let me ask, starting with Mr. Ryan and I'll work back up to Mr. Burck and Mr. Hough.

Mr. RYAN. Senator, that certainly is a potential solution. One of the things that we are concerned with is establishing yet again another agency and the time it would take to do that.

Senator HEINZ. Remember, the President just established another department or called for the establishment of another department the other day. These things happen.

Mr. RYAN. But again, we are concerned with the speed in which an additional agency——

Senator HEINZ. Let's suppose it happened tomorrow. Would it be a solution?

Mr. RYAN. It's a potential solution; yes, sir.

Senator HEINZ. Why potential?

Mr. RYAN. Well, I think one of our basic points is that interagency haggling is the basic problem and if it would truly stop that, then I guess——

Senator SARBANES. Suppose they made Mr. Perle the head of that office? How would you react to that?

Mr. RYAN. Well, again, our experience with Mr. Perle——obviously, industry has some disagreements with Mr. Perle and we would have some concern with Mr. Perle and him being the head of that sort of agency and his past conduct in the Department of Defense has been difficult for industry in terms of trying to do some business.

Senator SARBANES. Well, I will develop that in my own time, but I'm suggesting that maybe some checks and balances may work better for you than complete centralization. If you're on the in that's terrific, and if you're on the out it's very bad indeed.

Senator HEINZ. It's a perfectly reasonable, if biased, question, because that's true of any agency. If Mr. Perle is appointed head of the Department of Commerce, it would pose exactly the same problem. So I think ad hominem questions are inherently either irrelevant or unfair. They are usually unfair if you are on the receiving end of them.

Do you have any comments, Mr. Burck?

Mr. BURCK. Yes. I'm not sure we have to view—either the AEA nor my company have taken a specific position on any legislation that would promote things like an Office of Strategic Trade and Technology. I think this is what you're suggesting.

Senator HEINZ. One of the problems, frankly, with all of you is that you all do business with the Defense Department. As a result, you are going to have to be very circumspect in anything you say publicly. Otherwise, you might not get as many contracts.

Mr. BURCK. We haven't been terribly circumspect today, I don't think. I think we have been pretty decent about that.

Senator HEINZ. Well, so far, so good. What did you say your position was?

Mr. BURCK. I believe that Defense has an important role to play. I'm not sure that creating another agency or another office would solve the existing problem.

Senator HEINZ. What's the important role they should play?

Mr. BURCK. They should play a role in setting strategic criteria.

Senator HEINZ. Let's differentiate between policy making and licensing.

Mr. BURCK. They are in the policy making.

Senator HEINZ. OK, but we're talking about licensing. Under OSTT, they would be a very important and critical player in making policy. But once the policy has been made, the concept of OSTT is policy is made and now it's carried out by one person.

Mr. BURCK. I agree and I don't see why we have to have other agencies besides Commerce do that.

Senator HEINZ. Well, in theory you're right. In practice, unless you ban telephone calls between agencies, unless you ban meetings called interagency review meetings, you will have everybody participating in these decisions.

If you are here to support a ban on the interagency review under any circumstances of licensing decision, say so.

Mr. BURCK. I am here to support clear, defined controls.

Senator HEINZ. Well, maybe my first comment about the care with which you have to speak isn't so inaccurate after all.

Mr. Hough.

Mr. HOUGH. The export control working group for NAM has looked at this issue and does not support it.

Senator HEINZ. Does not support OSTT?

Mr. HOUGH. Right.

Senator HEINZ. Now you all say you want accountability, but you want to stick with some version of the current system. Let's say everything is consolidated under the Department of Commerce where most people seem to like it, and we take the DOD officially out of the review process for West-West licenses, but you don't ban interagency review officially. Do you know what's going to happen? What's going to happen is the wire bonder decision. Do you know about the wire bonder decision? Do you know who made the decision after 1½ years of review on foreign availability of wire bonders? A low-level bureaucrat named Ronald Reagan.

Now normally that should be dispositive of interagency review. He's the chief reviewer. They don't come any higher than that. The President decided. In the middle of 1987, yes, there's foreign availability. And it wasn't until January of this year that action was taken on the President's decision because of interagency haggling.

Now do you see what I mean?

Mr. HOUGH. Yes, I get your point, Senator.

Senator HEINZ. OK. If you want something to work, really work, how can you sit there and say just do it our way and everything is going to be fine, when even if the President makes the decision it isn't fine?

Mr. HOUGH. There should be a method of a dispute settlement that could be established to eliminate this.

Senator HEINZ. Well, that's what OSTT is designed to achieve. I just want to say to all of you fine gentlemen from the people who try to help you from time to time, what you're proposing you may get, but you're going to have a lot more lobbying of us here in Washington than what you've got now because in the final analysis it's not going to help because if they don't get you on the frontend they will get you on the backend, just like they did on wire bonders. So just think about that. But now that you've been warned, don't come back in 3 or 4 years and say, "Senator, we've got this terrible problem." Because you will have been warned.

Mr. Chairman, if I could continue on another issue I'd like to. Do we have time?

Senator SARBANES. Well, why don't you take a few more minutes and maybe we'll bounce it back and forth and take rounds.

Senator HEINZ. Thank you very much.

I'd like to ask about the issue—and all of you agree on this—of removing DOD from West-West licensing review and East-West licensing review below the PRC green line. Paul Freedenberg, is that still your position?

Mr. FREEDENBERG. Yes, it is.

Senator HEINZ. Let me ask Richard Perle. You're out-numbered four-to-one, Dick. What do we lose if we do that and let me ask the others to respond to what Richard Perle says in terms of what we gain.

Mr. PERLE. Well, I think it almost speaks for itself. You have four people representing industry.

Senator HEINZ. In fairness to Paul Freedenberg, before he represented industry he took this position.

Mr. PERLE. Well, when he represented the Department of Commerce he took this position.

Senator HEINZ. Like you, he took the same oath of office I assume.

Mr. PERLE. Yes, we take oaths of office to the Constitution. The Constitution is silent on the question of the division of responsibility between these two Departments.

Senator HEINZ. It's come to that.

Mr. PERLE. So I think it's clear, and Senator Sarbanes elicited this in his first very shrewd question—it is clear that the preference for removing the Department of Defense has nothing to do with efficiency. Because when the question was put—if the purpose is the single agency—would you have the Department of Defense do it, there was silence from all four of my colleagues. So the issue isn't efficiency. The issue is; will the national security concern be significantly represented in the decision process? And if you remove the Defense Department, it will not. I can guarantee it.

We will behave then as some other countries do that don't allow their Departments of Defense into the decisionmaking process and national security concerns will get virtually no consideration whatsoever.

Senator **Heinz**. On that point, how do you explain the wire bonder progression?

Mr. **Perle**. This happened after I left.

Senator **Heinz**. But Steve Bryen had been well trained by you.

Mr. **Perle**. My impression, Senator Heinz, is that the President's decision that resolved this was a decision to see if we could not persuade the other source—a single source, again, in Switzerland—to desist, in which case effective control could have been maintained.

Senator **Heinz**. But nobody went to the other source for 2 years after that decision.

Mr. **Perle**. Well, it was the responsibility of the Departments of State and Commerce to organize that diplomatic action. I supported it when I was in the Defense Department and have consistently supported the concept of an Office of Strategic Trade because I believe it is the only way you will have accountability and efficiency. I think my colleagues don't support that, not because they fear losing Defense Department contracts. I'm sorry to say the Defense Department is not so well organized that it can exert that kind of leverage. We would have done so if we could have. So that's not the motivation.

The motivation is that they want a sweetheart deal with the Department of Commerce, which is a place where their influence is significant and where if they can put the issue entirely in the Department of Commerce they call the tune. That's what it boils down to.

Senator **Heinz**. Any comments, gentlemen?

Mr. **Hough**. Yes. If I could comment, Mr. Perle talks about this sweetheart deal we have with Commerce and I think several of the Senators have referred to the Commerce's role of helping American industry and trade and I must be doing something wrong because I never had any of Paul's people helping us get orders. They were always reviewing our applications and reviewing them technically to the technical criteria of the commodity control list.

When we get over to the Department of Defense, in their reviews occasionally other criteria came in. I recall one meeting where we said all we're looking to do is help improve the industrial base of an Eastern European country and this official at Defense said, "But we don't want you doing that." And the technical criteria of the case led for it to be approved.

These are the kinds of instances why industry does not want the Defense Department totally involved in the export control process.

Senator **Heinz**. On the question of decontrolling to the China green line which I've proposed for Eastern Europe but not for the Soviet Union, I want to ask Richard why he would like, as I understood his comments, to retain licensing, and is there a reason to retain licensing on a huge list of what many people would call Radio Shack items?

Mr. **Perle**. I don't want to license Radio Shack items. That's really not fair. I'm not arguing for that. I have said that I think we can raise significantly the level that can safely be sold to the emerging democracies of Eastern Europe.

Senator **Heinz**. Decontrol, not license.

Mr. **Perle**. Raise significantly the level that can be sold provided there is some method of assuring that what is sold to Eastern Europe stays in Eastern Europe. I don't know how you can do that without a license.

Senator **Heinz**. You and I actually agree on what might be called yellow zone items—they should be permitted to be sold but they should remain licensed, so a proper antidiversion regime can in fact exist. I'm talking about the so-called green zone items which in your statement—if I misinterpret it I apologize—I thought you said most or all of those should continue to be licensed even though permitted to be sold.

Mr. **Perle**. No. I didn't comment at all. I simply argued, because it seems to me that the most important generic point—liberalization, creating a green line if you will—should be closely tied to a control and licensing mechanism so that sensitive items stay where they are supposed to be.

Senator **Heinz**. Then I gather that you don't have much disagreement with the legislation that I and others introduced.

Mr. **Perle**. Well, frankly, I do not know in detail the level of technology that would be decontrolled under the legislation you have proposed.

Senator **Heinz**. It would decontrol to Eastern Europe for green zone items to the PRC green line.

Mr. **Freedenberg**. I think there's a confusion about what green zone is. Are we talking about the China green line and everything below?

Senator **Heinz**. Yes.

Mr. **Freedenberg**. I would agree with Mr. Perle, there are some sensitive products there and licensing would be appropriate at that point.

Senator **Heinz**. For some of them?

Mr. **Freedenberg**. Particularly when we get into manufacturing, Senator Heinz.

Mr. **Perle**. With the Chinese, Senator, the decision was made—and I think it was the correct decision certainly at the time—that China did not pose a threat to the United States and therefore the green line was set rather high, a good deal higher than I would wish to see set for the Soviet Union.

If the line for the Soviet Union is to be below that line, then in order to make the system work you have to have a licensing requirement to Eastern Europe so that those things don't wind up in the Soviet Union.

Senator **Heinz**. For the sensitive items.

Mr. **Perle**. And I would be quite willing to see the level raised to Eastern Europe that requires no license at all.

Senator **Heinz**. Thank you. That clarifies it. That's very helpful. Thank you, Mr. Chairman.

Senator **Sarbanes**. Gentlemen, this is a good panel and I would suggest that since there are only two members of the committee still with us that you interject as you see appropriate even if the question is directed at someone else if you feel you have a comment you want to make. We got some back and forth going earlier and it might be helpful to increase the amount of that.

Mr. **Burck**. I had a question why Senator Heinz would wish to make a clear distinction between the East bloc and the Soviet Union and also I would like to add to Mr. Freedenberg's comments that I think that we get confused—when you've been in the high tech industry as long as I have as a layman observing it, as a lawyer practicing it, there's a big difference between manufacturing and finished product. When we talk about selling finished product, there should be considerably more flexibility in what is allowed to be sold than giving the process of a technology of how to make it.

Sometimes that distinction is lost in the export licensing process. That's an editorial comment.

Senator **Sarbanes**. I'm very sympathetic to the industry complaint that they can't get timely decisions because I think you are entitled to a timely decision even if it is against you.

Second, you are entitled to decisions that you can look at and whose substance has some merit to it so you don't say, well, how could this decision have been made in the context of what's happening elsewhere.

When we last dealt with this act we tried to address some of that problem. The complaint was that the Department of Defense wouldn't act and they would tie up their approvals for months. They would just sit on them. Or that if there was a disagreement between Commerce and Defense and then the decision had to go to the President you would get no action out of the President.

So one of the things we did in the last revision of the bill is we gave the Defense Department 20 days to come back. If they failed to come back within 20 days, the Commerce Secretary could move ahead. We tried to take care of that. They could still have an input. You got the benefit, but they couldn't tie the thing up and they had to give you a decision within a specified time period.

We also then said that if they recommended negatively and Commerce wanted positively, they had to go to the President to be resolved and if the President didn't act within 20 days the Commerce Secretary could move ahead. So we tried to structure it so you still got the input but there couldn't be a hold on it that denied you a decision.

Now why isn't that system working or hasn't it been in place long enough to work?

Mr. **Burck**. Those specific dates and deadlines don't seem to work in my experience. There's a delay process involved in terms of each party indicating they want to look at it a little bit more and there's a courtesy or whatever that allows it to happen and you don't get decisions up to the top level—you don't get to the President's level in the proper timeframe. In my experience, it has not worked. Perhaps we don't have the proper clout, but it doesn't work.

Mr. **Perle**. Could I comment, Senator? The overwhelming majority of cases, 99-point—and I don't know what's to the right of the decimal point—percent are settled very quickly. You don't need the 20 days.

The cases that sometimes take longer are the difficult, precedent-setting cases, cases where tough decisions have to be made because you know that when you authorize the first of the class you are opening virtually unlimited quantities of that technology to the Soviet Union. Sometimes those cases take longer and they ought to take the time necessary to make deliberate and intelligent decisions. And getting all of the information supplied with the applications that's necessary to make those decisions—requires an orderly process that is going to take some time in the difficult, precedent-setting cases—because frequently, the applications are vague, inadequate and sometimes wrong.

Nobody is going to send a routine case to the President or indeed a routine case very far up the ladder, but you do sometimes get cases of very substantial importance—like the one that was alluded to earlier today, the Oggi electronic discharge machine tools—where a reasonable amount of time is necessary to make an intelligent and informed decision. That decision, as I understand it, was made in 4 days and it probably turned out to be a bad decision, in part because it wasn't thoroughly vetted.

Mr. **Freedenberg**. I think the complaint really is about the final decision. What happens is that in any case that's difficult you're going to ask for more information. The Commerce Department will do it. The Defense Department will do it. I think the problem you have is when you're about to get a denial, you will allow for more time to be taken, and that's where you really get into the complaint from the industry and that's why they suggested Commerce taking more of a role in the end decision, not so much the time. Again, I would agree, the time in most cases is fairly fast now. Also, to be very clear, that's why I also did endorse, perhaps not firmly enough—I will now—the OSTT. I think that would get rid of this interagency ping-ponging of the license and I think that's one way out of this which would clearly solve it. The only problem I think is, how do you get from here to there and not whether or not that's a good idea.

Senator **Sarbanes**. Of course, one way you get there without all of that is for the administration in this review that's now underway to respond to the changing circumstances and some of these pressures that industry feels at the same time they protect the national security concerns.

We have a vote so we're going to bring this to a close. I wanted to ask Mr. Perle, how concerned are you about the deterioration of CoCom? In other words, these other advanced industrial countries will sort of move ahead if the United States doesn't make some significant adjustments and that we're trying to hold them in place and obviously we want that regime rather than not. How significant a problem do you see that as being?

Mr. **Perle**. I think we should make adjustments to maintain the integrity of CoCom. I'm always a little bit amused when people who have real concerns about the overall system come before you as protectors of CoCom and interested in preserving it. I think the single most important element in the cohesiveness and effectiveness of CoCom is clarity in the American position. We have some influence there, not total influence. We have to compromise. I recognize that. But we need to be clear about what it is we want to accomplish in CoCom and the administration, in my view, has not yet established its own goals with sufficient clarity so that it can present them forcefully to our allies.

I believe, Senator, if I could just make this last comment, that in the action you referred to earlier, which was intended to expedite the process, the last time around a significant shift in authority with respect to export controls was made by the Congress in the direction of the Department of Commerce to the point where the Defense Department today with respect to this activity has been marginalized and is significantly demoralized, in my experience.

I hope the committee won't take this a step further. If you do, I think you run the risk of reducing the Defense Department role to the point where there will be no serious national security input. The Defense Department is not the problem, although I can understand why exporters would like to see it out of the picture entirely.

Senator **Heinz**. Mr. Chairman, there is one question we should ask Paul Freedenberg and Mr. Perle if we have time, and that is, the impact of German reunification on CoCom and whether CoCom becomes meaningless in the context of German reunification.

Mr. **Freedenberg**. Obviously, until there is full reunification, it does become extremely difficult to control the products because we now have essentially no border between the two Germanies. That is another reason why one should emphasize the manufacturing of the larger products because essentially with regard to the lower, the smaller, more easily transported—and I know you saw the microprocessors that make computers of much higher performance—we had extreme difficulty in controlling that.

The one good thing that we can say is CoCom has worked in terms of keeping the processes from the Soviets and we have to focus on that for the future so that we continue to have it.

Senator **Heinz**. If I might just sharpen the debate a little bit, the U.S. Government has in fact, if not endorsed, at least acquiesced in the following notion: that there is going to be a permanent Soviet military presence in what is now the GDR, or a near-permanent presence. The Soviet troops will certainly be there long after they are out of Czechoslovakia, Hungary, and Poland. There are 390,000 of them there right now. The Soviets don't even know where to put them. We're worried about diversion in Czechoslovakia, Hungary, and Poland and here in Germany, you're going to have this complex of Soviet military bases throughout those 5 territories and I don't see how one is going to be able to prevent massive diversions to the Soviet Union. All they have to do is load them on a Soviet plane and fly them out of a Soviet base and they're there.

It seems to me everybody is minimizing the problem. I think it's a central problem.

Mr. **Perle**. It seems to me, in principle—and while no embargo is perfect—a reunified Germany which will have some sovereign authority should be in a position to protect against the Soviets illegally acquiring and exporting from its territory. It isn't going to be perfect, but I hope you're wrong in characterizing the position of the Government of the United States with respect to a continuing Soviet military presence in a unified Germany. I think the unified Germans are going to demand that the Soviets leave and I would hope that the United States would not be on the side of continuing occupation under those circumstances.

I think the Russians are going to be out of Eastern Europe, by and large, within a couple of years because the people of Eastern

Europe don't want them there. And the people of the Federal Republic of Germany and the East Germans in particular have no desire to cooperate with the Soviet military. So this problem may turn out to be more manageable than it now appears.

Senator **Sarbanes**. Gentlemen, you've been a very helpful panel. We now have a vote. We are going to submit some questions to you. Senator Kerry couldn't stay and he wanted to submit some questions.

I just want to ask the three representatives from industry whether they have in the works or on their plans right now any significant high-level meeting with the administration as they are now engaged in these reviews and as they are putting together what their position is going to be at CoCom?

Mr. **Burck**. We do. The AEA does.

Mr. **Ryan**. We do.

Senator **Sarbanes**. Separately?

Mr. **Burck**. Yes, and also all the various groups.

Mr. **Hough**. There are various coalitions in industry, yes.

Senator **Sarbanes**. Well, you're here seeking some response to the problems you perceive and it seems to me the immediate place to go, the relevant forum, is in the administration as it formulates a position that they hope will be the CoCom position come the high-level meeting in June. I must say to you that I am somewhat taken aback this morning by what I sense to be a failure to deal with this issue at the very highest levels within the administration as they relate to industry.

Mr. **Ryan**. Senator, as far as Hewlett-Packard is concerned, John Young, our president, was on a speaking panel with Commerce Secretary Mosbacher at the Hanover Fair. They specifically discussed some of these concerns and Mr. Young followed up yesterday with Mr. Kloske to——

Senator **Sarbanes**. But what you should be seeking is a place where Cheney and Mosbacher and Baker are all there.

Mr. **Ryan**. That's true, but that's very difficult.

Senator **Sarbanes**. They all have roles to play. They are important roles. They bring different perspectives. It seems to me you somehow need to be engaged in a process with the administration thrashing these issues out.

Mr. **Burck**. We need all three of the Secretaries meeting at the same time with the coalition people.

Senator **Sarbanes**. You might even have the President there. It's going to be an important issue before it's over with.

Thank you very much. You have been very helpful.

The committee is adjourned.

[Whereupon, at 12:25 p.m., the hearing was adjourned.]

[Response to written questions and additional material supplied for the record follow:]

QUESTION FOR THE HONORABLE STEPHEN HADLEY
FROM SENATOR CRANSTON
MARCH 7, 1990

Q.1. Which Under Secretary oversees the Military Critical Technologies List? Why?

A.1. The Secretary of Defense directed the Under Secretary of Defense for Acquisition to develop the DoD technical portion for the Militarily Critical Technologies List. This is consistent with the general breakdown of responsibility between the Under Secretary for Policy, who develops and issues DoD technology transfer control policies, and the Under Secretary for Acquisition, who provides technical support in the development of DoD technology transfer policy.

Q.2. What is DoD's processing time for export licenses to the PRC and controlled countries?

A.2. The average processing time ~~in the~~ Department of Defense for export license requests to the PRC and other proscribed countries is 10 to 12 days.

Q.3. Which free world countries does DOD review"

A.3. Based on a Presidential directive, DOD reviews license applications to certain Free World destinations for goods and technologies falling within eight of the more than 200 commodity list categories in the Export Administration Regulations. DOC was authorized to review applications for up to 15 countries. Because seven of the originally specified countries have agreed to abide by COCOM export regulations, DOD now reviews applications for only eight countries. I would be happy to provide more specifics on a classified basis.

Q.4. Does DoD review individual license applications to the PRC below the Green Line?

A.4. No. DoD has delegated authority to the Department of Commerce to independently review all license applications for the export of sub-Green Line equipment to the People's Republic of China without referral to DoD.

QUESTIONS FOR STEPHEN HADLEY
FROM SENATOR GRAHAM
MARCH 7, 1990

Q.1 Are COCOM partners treating exports of aircraft, engines and related technical data to Eastern Europe and the Soviet Union under the same licensing rules? Does DoD have apporval rights of marketing activities in these countries?

A.1 There is within COCOM an agreed-upon set of safeguards which is being applied by all member nations to exports of Western aircraft and supporting technical data to Eastern Europe and the Soviet Union. Under those guidelines, several sales and leasing transactions involveing Boeing and Airbus aircraft have already been approved for release by COCOM to Soviet and East European national carriers.

Exports of engines and related technical data for purposes of retrofitting Soviet-built civilian aircraft are considered on a case-by-case basis, taking account, inter alia, of: the engine technology involved; concerns, if any, about the possibilities for reverse engineering; and safeguards to ensure accountability of the engines and acceptable maintenance and servicing procedures.

DoD reviews all aircraft-related export applications if they involve hardware and/or technology falling within COCOM control categories. This applies in equal measure to cases involving marketing activities, which generally entail release of some level of controlled technology.

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DEPARTMENT OF DEFENSE

QUESTION FOR THE HONORABLE STEPHEN HADLEY
FROM SENATOR GARN
MARCH 7, 1990

Q.1. Eighteen months ago during the trade bill debate, the Administration objected to Congress delicensing trade with COCOM up to the then "PRC Green Line" on grounds of national security. On January 12, the Commerce Department reported that export control systems in COCOM could not be certified as secure enough to justify creation of a license-free zone in COCCM. Now, however, we are now told that requirements for 85% of licenses above the Green Line are about to be eliminated throughout COCOM. What is the basis for this new found level of confidence in COCOM enforcement? What has happened in the last six weeks to justify it?

A.1. The Executive Branch has not yet certified any COCOM or other country as fully implementing an effective export-control system under the stipulations of section 5(C) of the Export Administration Act. This is perhaps the basis of the reported Commerce Department statement on January 12. COCOM members have agreed to implement, by December 1991, a common standard of effective export controls and to simplify intra-COCOM trade by creating national general licenses so that most controlled goods can move among COCOM members without prior governmental review. This latter step is sometimes called the creation of a "license-free" zone even though the goods remain licensed and penalties for violations remain in effect. We actively support the U.S. and COCOM measures aimed at improving enforcement.

Q.2. Last year, the United States undertook an initiative to achieve better COCOM enforcement up to a "common standard" of performance in return for movement to full license-free trade within COCOM -- a quid pro quo. Most of the delicensing is going into effect with improved enforcement left as an "objective" by the time of the single EC market in 1992. Hasn't the U.S. strategy fallen apart? Unless we reclaim lost ground on enforcement, don't we risk major national security losses?

A.2. The U.S. strategy remains intact. We have always sought to link any simplification of intra-COCOM trade to improvements in COCOM members' controls. As reflected in our answer in Q.1. our partners have agreed to the same target date for implementing the new general license for dual-use goods in intra-COCOM trade and for meeting the agreed common standards for export controls. As COCOM shifts to a system of fewer governmental reviews of dual-use exports, enforcement clearly takes on heightened importance.

Q.3. In lieu of the current licensing regime, the U.S. will maintain licenses for an "exclusion list" of goods and record-keeping requirements for exporters on the rest. Yet there is apparently no uniform agreement among COCOM governments on the list and the record-keeping rules. Even if the general policy makes sense, don't we risk placing U.S. exporters in an untenable position facing more unilateral controls and more complex requirements than their competitors?

A.3. Although no uniform rules has been adopted for dual-use exclusion lists and for record-keeping, COCOM members are still striving for compatibility in their exclusion lists where it can be achieved: witness the on-going efforts of the U.S., Japan, Canada, and Belgium. As for record-keeping and other protective measures, members do agree on their main features even if not on every detail. There will be no unilateral controls on U.S. exporters and this system of general licenses considerably reduces, rather than increases, their requirements vis-a-vis foreign competitors.

Q.4 Why has Defense been so quiet and conciliatory during the debate on liberalizing high technology trade with the Soviet Bloc?

A.4 Defense has been fully engaged in interagency formulation and public explanation of Administration positions on possible changes in export controls.

Q.5. Does Defense believe that the Soviets are today still attempting to acquire high technology for military applications, upgrade strategic systems, and maintain diversion channels through Eastern Europe?

A.5. Despite the recent dramatic changes in the USSR and Eastern Europe, the evidence shows "business as usual" in Soviet efforts to obtain restricted Western technology for a broad range of weapons systems due to become operational in the coming decade. Recent analysis reveals a concerted effort to close the qualitative gap while continuing to maintain a greater number of strategic and tactical weapons systems. The apparent shift of East European nations away from communism notwithstanding, these countries are continuing to acquire technology illegally on behalf of the Soviet Union.

Q.6. If Defense now supports the U.S. proposal to develop a common standard and decontrol everything for shipment to COCOM destinations except a dozen or so critical items on the so-called "_exclusion_ list", what changes in COCOM have occurred to end Defense's objections for many years in the streamlining exercise?

A.6. DOD objectives in the streamlining exercise remain the same: to ensure that items are removed from the control lists only when they are no longer considered strategically sensitive. The agreement in COCOM to institute general licenses for most goods is intended to free exporters from the need to seek prior governmental review of their exports to COCOM countries, but does not decontrol the goods nor does it release exporters and importers from their present obligations under national laws to protect these goods. Defense has never objected to specific streamlining proposals when there is COCOM agreement that removing the list item or items in question would not pose too great a risk to mutual security interests.

Q.7. Do the items left on this "exclusion list" truly represent the critical or "core items?" How many are now controlled on the munitions list? Does Defense plan to seek a shift of additional items from the dual use list to the munitions list to compensate for this recent decontrol?

A.7. The exclusion list denotes an administrative distinction rather than one that reflects the relative value or sensitivity of the controlled items. Only one dual use entry -- satellite technology -- is also controlled on the munitions list. We do not plan to shift any items from the dual use list to the munitions.

Q.8. What is Defense's position regarding the possibility of similarly decontrolling the majority of items of the Munitions List, at least for intra-COCOM trade?

A.8. Export applications referred to DOD by State involve Munitions List items that are important or critical to national security and are therefore inappropriate for this type of decontrol. It is our understanding that this is not included in the current COCOM initiatives.

QUESTIONS FOR THE HONORABLE STEPHEN HADLEY
FOR SENATOR CONNIE MACK
MARCH 7, 1990

Q.1. Is it true that the Soviets have stepped up their efforts to target high-technologies in the West?

A.1. Yes. It appears that the Soviets recently have increased the number and specificity of technology acquisition requirements. The Soviets intend to put a new generation of various weapons systems into operation throughout this decade. Since the Soviets lack the indigenous capability to develop or manufacture many of the technologies on their own, efforts to acquire the needed Western technology are continuing.

Q.2. What is your estimate of the cost to our own Defense budget to compensate for Soviet advances made with Western technology, such as in the infamous Toshiba case?

A.2. Estimates for some specific diversions, such as Toshiba, will run into the billions of dollars over the next decade. The cost of Toshiba, however, is only part of what it will cost to overcome considerable technology losses in overall submarine quieting.

Q.3. Did the Administration agree at the last COCOM meeting in Paris to take substantial steps to decontrol technologies that the Soviets are targeting?

A.3. No. What the Administration did at the February meeting of COCOM's Executive Committee was to agree to a work plan on proposals in the areas of computers, machine tools, and telecommunications which are under discussion by COCOM members in the framework of the COCOM strategic criteria. In this context, the U.S. has already tabled initial proposals for liberalization. The NSR will determine how much further is possible, consisitent with our security interests.

Q.4. Has any strategic assessment been done of the impact these proposals would have on the Soviet military, or the cost to our own defense budget?

A.4. The USG supports all of its proposals in COCOM with strategic assessments of security risk that take into account potential contributions to enhancement of the Soviet military threat.

Q.5. Are the technologies that some of our Allies want to decontrol generally available outside of COCOM? Are they available in the Soviet Union?

A.5. No. Very little is available to the Soviet Union from sources outside of COCOM or beyond control via bilateral and other types of arrangements.

Q.6. Aren't the technologies some of our AllieS want to decontrol primarily of use to the Soviet military? Isn't the civilian economy generally unable to absorb this technology?

A.6. By definition items on the COCOM Industrial List all have military as well as civil applications. The reason they are subject to control is because COCOM members all agree that they could provide unwarranted assitance to the military strength of our adversaries.

The inability of the civilian economy to absorb and integrate modern technology to some degree seems to be the result of systemic problems and overemphasis on military activity.

Q.7. What do we know about any continued intelligence sharing between the East Bloc and the Soviets in the tech transfer area? Do the new governments have the ability to stop this intelligence sharing yet?

A.7. The East Europeans continue to share with the Soviet Union technology that they obtain illegally. The new governments have not demonstrated an ability to get a tight grip on their intelligence services, including their relationship with Moscow. Moreover, such control may be more than these fledgling governments are willing or able to muster. Despite efforts to distance themselves from Moscow, the new noncommunist governments cannot now or for the foreseeable near term afford alternatives to Soviet energy and other necessities. This continuing dependence makes them vulnerable to Soviet leverage to demands in the intelligence sharing and illegal technology transfer.

United States Department of State

Washington, D.C. 20520

APR 20 1990

Dear Mr. Chairman:

Thank you for your March 19 letter requesting answers to the questions posed to Ambassador Allan Wendt by Senators Garn, Graham and Cranston during your Subcommittee's hearing of March 7 on COCOM matters and the reauthorization of the Export Administration Act.

Attached please find our responses. Let me reiterate the Administration's commitment to adapt COCOM to the changing strategic environment. We expect changes in our national security export controls that will enable industry to react more quickly to new business opportunities in Eastern Europe and the Soviet Union. COCOM is streamlining its lists to reduce controls. This will also assist our effort to enlist cooperation from third countries which produce high technology goods. In addition, COCOM members are taking steps to harmonize their national protective measures in an effort to simplify trade in strategic items among COCOM partners.

Please let me know if I can be of further assistance on any matters related to strategic trade.

Sincerely,

Janet G. Mullins
Assistance Secretary
Legislative Affairs

Paul S. Sarbanes, Chairman,
Submcommittee on International Finance and
Monetary Policy,
Committee on Banking,
United States Senate.

Questions for Ambassador Allan Wendt from Senator Cranston
March 7,1990

Q.1. Are there items on both the CCL and the USML? If so, why? How are jurisdictional disputes handled and how long does it take?

A.1. There is no intentional overlap between items on the CCL and the USML. Occassionally, a company will have a question as to whether its product would be considered as a defense article or defense service under Section 120.3 of the International Traffic in Arms Regulations (ITAR). Under these circumstances, the company may ask for a "commodity jurisdiction" review, or CJ, to determine whether it falls under the regulation of the ITAR or the Export Administratin Act (EAA). US Government agencies--including the Department of State--may initiate a CJ as well.

On average, the CJ process takes about sixty days. In 1988 we reviewed 217 cases; in 1989 we reviewed 223 CJ cases. During the past two years, Commerce recommended removal from the USML in approximately 90 percent of all cases. Defense agreed with Commerce about 63 percent of the time. In the end, about 80 percent of the cases were moved from the USLM to the CCL. In fact, we have publically stated that we would like to see more CJ cases submitted to us in order to streamline the USML.

A lengthy description of the commodity jurisdiction review mechanism recently published in Defense Trade News has been provided for the record.

Q.2. What is the average processing time by State for export licenses to COCOM, the rest of the free world, the PRC, and controlled countries?

A.2. Routine munitions licenses that do not require interagency referral are normally handled within eleven days. About 20 percent of all munitions license cases are referred to DOD; these are normally returned to State for final action in approximately fourteen working days.

Q.3. Why hasn't Commerce been given permission to have a permanent representative at COCOM?

A.3. New positions are established at overseas missions only with the concurrence of the U.S. Ambassador. New permanent positions are established according to National Security Decision Directive (NSDD) 38. Under NSDD 38, Chiefs of Mission have the authority to determine the size, composition, and mandate of all staff operating under their authority. In accordance with these procedures, the Departments of Commerce and State presented their views regarding the proposal to our Ambassador to the OECD, Denis Lamb, who has authority over our COCOM delegation. After reviewing all the arguments, the Ambassador decided on January 12 that a Commerce Department position at COCOM was unnecessary.

In reaching this conclusion, the Ambassador cited a number of concerns, including the significant costs involved in this time of budgetary constraint. He said, "The possible savings in TDY travel postulated by Commerce as a result of assigning a person to Paris are, I believe, unlikely to be realized." To expand on the Ambassador's views, it is particularly difficult to substitute a Paris-based officer for delegates from Washington in the List Review negotiations. These COCOM deliberations focus on technical issues covering numerous commodities and the U.S. negotiating positions are developed through interagency technical debates. Even if there were a Commerce Department position at COCOM, we feel certain that Commerce, along with other participating agencies, would find it necessary to support the List Review negotiations by continuing to send to Paris those technical experts on its staff most familiar with the technical and policy issues. With this in mind, we believe the Commerce proposal would probably generate increased, rather than reduced expenditures, taking into account the cost of supporting a full-time staff officer at post.

In the Ambassador's words, "the threshold reason" for his decision "is that there is not enough work at COCOM for an additional mid-level officer to justify the considerable expense to the U.S. government entailed in such an assignment." As we move quickly to reduce the scope of our export controls, there will be even less justification in the future for any additions to the staff of the permanent U.S. Delegation at COCOM.

Q.4. What specifically did the Administration table at the COCOM meeting last month, what was the response of our allies, and what proposals are envisioned for the next meeting?

A.4. The interim proposals advanced by the U.S. at the Special COCOM Executive Committee meeting in February included: reduced COCOM case-processing time; some streamlining of the controls in computers, telecommunications and machine tools; and modified favorable consideration at roughly the level of the China Green Line for Eastern European countries that adopt safeguards against diversion of controlled technology.

Our Allies generally thought we should go farther, faster. Many were also reluctant to adopt the principle of differentiating between the USSR and Eastern Europe -- at least at the levels proposed by the U.S. in its interim proposals. At the close of the meeting members agreed to: reduce case processing time by one-third (from 12 to eight weeks) for all proscribed countries except China, which already has even quicker case processing; accelerate streamlining of the control lists in three priority sectors: computers, telecommunications and machine tools; and consider whether there should be more favorable treatment for proscribed countries that adopt safeguards to prevent diversion of controlled technology. Members also agreed to hold a High Level Meeting in June to make further progress in adapting COCOM to the changed strategic environment.

Prior to the High Level Meeting, the Presidentially mandated conprehensive review of our COCOM policy will be complete. The review includes an assessment by the Joint Chief of Staff of the impact on our security of increased levels of technology transfer to the USSR and Eastern Europe as well as an examination by the intelligence community of the intelligence networks among members of the Warsaw Pact as they relate to illegal acquisition of controlled technology. Our proposals to COCOM in June will be based on the findings in the review. We want to streamline the control lists to the greatest extent possible without unacceptable risk to our national security. We expect that our comprehensive proposals will provide for broader streamlining of the controls lists than did our interim positions in February.

Q.5. When is the "comprehensive strategic review" going to be completed? As part of the process, will the Administration be reviewing the criteria used for determining additions to, or deletions from, the list of controlled countries? If not, why not?

A.5. The JCS and intelligence community studies referred to above were due on March 30. Based on the results of those studies, the Department of State has been tasked to coordinate formulation of comprehensive proposals to be ready for the President by April 27.

The mandate of the review does not explicitly include a review of the criteria for determining additions to, or deletions from, the list of proscribed countries. Defining specific criteria for adding or deleting countries on the the proscribed country list would be time consuming and ultimately of minimal operational usefulness. Ultimately, a country's status as a proscribed country derives from a range of factors that can only be determined on a case-by-case basis. The studies will, however, address the question of the level of national security concern we have regarding export of strategic technology to the proscribed countries. Status as a proscribed country does not preclude significant reductions in the amount of technology that is denied.

Q.6. What kind of safeguards is the U.S. looking for before agreeing to increased exports to Eastern Europe and are they going to be imposed on a unilateral or multilateral basis?

A.6. Three Eastern European governments - those of Hungary, Poland and Czechoslovakia - have expressed willingness to establish safeguard regimes for Western technology. We have invited officials of those governments to Washington to pursue the subject. Those discussions will focus on technical issues, and be conducted on a working-level. We expect these discussions to commence in the near future. COCOM members have agreed to report to COCOM on the results of discussions with Eastern European governments on safeguards.

We continue to carefully coordinate with COCOM on safeguards discussions with Eastern European governments. We believe the issue of Eastern European safeguards regimes and liberalized strategic technology exports must be decided multilaterally through COCOM, not unilaterally.

We have submitted a paper to COCOM and to the sub-committee that outlines our ideas on the essential elements of safeguards regimes in Eastern European countries. The most important of these safeguards involve: 1) making a national commitment to ensure that strategic goods and technologies are not diverted to unauthorized end-users or uses; 2) providing government-backed end-use assurances, when requested; and 3) providing for on-site inspection as needed on a case-by-case basis.

We also remain concerned about the question of illegal acquisition and diversion of controlled technology. We would look for some assurance that such activity has ceased and might also seek cooperation in investigating diversions of controlled technology.

Safeguards against diversion do not represent an ironclad guarantee. Rather, we believe they give us the margin of comfort and leverage to transfer higher levels of technology to countries that accept them than to countries without safeguards.

Exactly what level of technology we could offer has not been determined. COCOM members agreed at the February 1990 Executive Committee meeting to consider whether countries adopting acceptable safeguards should receive more preferential treatment. There is, as yet, no consensus in COCOM on either the principle of such differentiation or the level of technology that might be made more accessible.

As to the possibility of removing some countries from the list of proscribed destinations, these countries are still members of the Warsaw Pact and we must therefore be careful not to allow the transfer of technology which would enhance their military potential in a manner detrimental to our national security.

The United States will not ignore national security concerns in the interest of an emotional response to the positive political developments in Eastern Europe and the USSR. Our decisions regarding national security concerns are made and will continue to be made based upon an assessment of the level of risk posed to our security by the export of strategic technology. We relax controls when the technology is no longer considered strategic or when it has become available from foreign sources so that maintenance of controls would not enhance our security, but simply disadvantage our exporters.

The purpose of the Presidentially-mandated comprehensive strategic review is to get a current assessment of the level of threat posed to us by Eastern Europe and the Soviet Union in the context of strategic technology so that we may develop appropriate proposals to COCOM.

Questions for Ambassador Allan Wendt from Senator Graham
March 7, 1990

Q.1. In your written testimony you said you are making "administrative changes to improve coordination and dispute resolution between government agencies." Can you tell us what the key changes are and what is the timetable for implementing them?

A.1. We are fine-tuning the process for resolving interagency disputes on export control licensing cases. The procedures reflect the Administration's support for reform in Eastern Europe and the Soviet Union by ensuring predictable processing of export transactions that foster modernization of civilian sectors.

These procedures also reflect the need to be more responsive to the newly-agreed COCOM time limits on case processing. The guidelines include setting up a more rapid, high-level process when there is disagreement on the disposition of an application.

It should be noted that few export applications require inter-departmental escalation. Eighty-five percent are resolved by the strategic trade specialists and their counterparts in the other agencies. Nevertheless, the first step in the dispute resolution process for U.S.-origin East-West cases is the Operating Committee (OC). The group is chaired by Commerce and contains policy representatives from State, Defense and Energy. It meets weekly and resolves most of the cases that are referred to it. In instances where Commerce believes that insufficient arguments have been presented to deny a specific transaction, it has the option of notifying a dissenting agency that it intends to issue an export license. The dissenting agency then has ten (10) working days to present its arguments, in writing, to the next level of review. The burden of further escalating disputed export license applications thus falls on the agency opposing the Commerce Department position.

These procedures usually result in resolution of disputes within the statutory limit for export licensing review and determination. However, there are issues that require more than the normally allotted time-frames. As you may know, Section 10(f)(4) of the EAA, permits the Secretary of Commerce, with notification to the Congress and the applicant, to extend any time period when circumstances so require.

With regards to the commodity jurisdiction, or CJ, procedure, administrative changes have been implemented already. First, the State Deparment has publicized the CJ process in the most recent edition of Defense Trade News, which is submitted herein for the record. Second, in June 1989, two appeal steps were added at the Department of State by the Under Secretary for Security Assistance, Science, and Technology Ambassador Reginald Bartholomew. These steps are detailed in the previously mentioned submission. In addition, the Department of State has initiated a regular interagency meeting chaired by the Director of the Center for Defense Trade at the Deputy Assistant Secretary level to consider any pending appeals or other pertinent matters.

Q.2. Have you reached an agreement with Commerce regarding inter-agency disputes over commodity jurisdiction requests? If not, why not.

A.2. In our view, we have come a long way in improving the commodity jurisdiction review process as has been described above. We continue to work toward a satisfactory resolution of these differences. In the meanwhile, we will continue to carry out the Department of State's statutory responsibilities to resolve commodity jurisdiction disputes.

Questions for Ambassador Allan Wendt from Senator Garn
March 7, 1990

Q.1. Eighteen months ago, during the trade bill debate, the Administration objected to Congress delicensing trade with COCOM up to the then "PRC Green Line" on grounds of national security. On January 12, the Commerce Department reported that export control systems in COCOM could not be certified as secure enough to justify creation of a license-free zone in COCOM. Now, however, we are now told that requirements for 85% of licenses above the Green Line are about to be eliminated throughout COCOM. What is the basis for this new found level of confidence in COCOM enforcement? What has happened in the last six weeks to justify it?

A.1. The United States Government has long sought to reduce barriers to Intra-COCOM Trade. The January 1987 COCOM High Level Meeting (HLM) established simplification of export procedures among members as an important COCOM objective. A U.S.-Japanese press release issue on October 7, 1987 during bilaterals Ambassador Wendt held with the Japanese Government called for the eventual elimination of licensing for dual-use commodities among all COCOM countries. The July 1987 COCOM Special Meeting refined this objective when it agreed to consider establishment of a "less burdensome but equally effective" substitute system for current export licensing and Import Certificate/Delivery Verification (IC/DV) procedures. U.S. and other members' positions on such a substitute system evolved since the January 1988 Senior Political Meeting.

The impetus behind the Intra-COCOM Trade (ICT) effort came from COCOM members' interest in reducing the burden of export controls on industry and government, particularly in West-West trade. In the United States alone, about two-thirds of the individual validated licenses issued for dual-use exports for COCOM countries, some 25,000 licenses valued at $32 billion, could be eliminated. These savings will help member governments focus their time and resources on controlled exports (i.e. outside COCOM) of greater concern.

After over two years of work, the United States obtained COCOM agreement on procedural safeguards that all members would bear in mind when implementing national systems for ICT: exporter declaration, importer statement, record-keeping and inspection requirements, and re-routing requirements.

At the October 1989 High Level Meeting, COCOM also reaffirmed the importance of maintaining effective protection of strategic exports while implementing substitute systems for ICT. At that meeting, the United States obtained agreement from all COCOM members to the objective of implementing a Common Standard Level of Effective Protection by December 1991.

At such, there is no contradiction between the DOC report of January 12, 1990 and the decision to move forward on ICT.

Q.2. Last year, the United States undertook to achieve better COCOM enforcement up to a "common standard" of performance in return for movement to a full license-free trade within COCOM -- a quid pro quo. Most of the delicensing is going into effect with improved enforcement left as an "objective" by the time of the single EC market in 1992. Hasn't the U.S. Strategy fallen apart? Unless we reclaim lost ground on enforcement, don't we risk major security losses?

A.2. The United States has pushed for stronger enforcement among COCOM members since the early-1980's. As part of our effort, we asked for the January 1988 Senior Political Meeting. At that meeting, COCOM member governments first agreed to work toward establishing a "Common Standard Level of Effective Protection" in order to control goods and technologies against diversion to unauthorized destinations. Several countries have made considerable progress. For example, Japan, Norway and the Federal Republic of Germany have all significantly reorganized their licensing and enforcement efforts, dedicating additional resources to the export control process. Some countries have also promulgated new export control regulations and added more personnel that have greatly enhanced enforcement. The Common Standard represents our effort to define multilaterally the type of export control regimes COCOM members need to provide effective enforcement.

The agreements reached at the October 1989 COCOM High Level Meeting provided the essential protection to allow COCOM to immediately reduce barriers to Intra-COCOM Trade (ICT): COCOM members agreed to theobjective of implementing the Common Standard Level of Effective Protection by December 1991; they agreed to bear in mind COCOM procedural safeguards when implementing their national ICT systems; and they reaffirmed the importance of maintaining effective protection of strategic exports while implementing substitute systems for individual licenses in ICT. These agreements are a major step in a long-term and ongoing effort to improve enforcement.

COCOM members recognized that creation of a Common Standard does not mean all countries would establish identical measures, but that members were committed to establish control measures that yielded "equally effective" protection. The Common Standard is meant as an enforcement mechanism to protect the mutual security of member countries without creating commercial disadvantages.

COCOM has successfully agreed on the elements of the Common Standard. There are seven broad categories of elements: (1) a national and regulatory basis for export controls, licensing, and enforcement; (2) licensing-related documentary requirements; procedures to review license applications and screen parties to transactions; (4) a national commitment of resources to export control programs; (5) post-licensing verification procedures; (6) export enforcement responsibilities and programs; and (7) international cooperation and information exchanges supportive of national export control programs.

We have not abandoned our strategy of linking progress in developing an ICT license-free system to progress in the Common Standard. Until the Common Standard is fully implemented throughout COCOM, the United States will apply a temporary exclusion list of IL items for which individual licenses will continue to be required. The 16 items on our exclusion list are the most strategically sensitive IL entries, posing the greatest risk of diversion. The exclusion list will help preserve the mutual security of all COCOM members pending complete implementation of the Common Standard. Ultimately, we are committed to removing all items from the ICT exclusion list, thereby creating a strategic free trade zone within COCOM, once the Common Standard is fully implemented.

Q.3. In lieu of the current licensing regime, the U.S. will maintain licenses for an "exclusion list" of goods and record-keeping requirements for exports on the rest. Yet there is apparently no uniform agreement among COCOM governments on the list and record-keeping rules. Even if the general policy makes sense, don't we risk placing U.S. exporters in an untenable position facing more unilateral controls and more complex requirements than their competitors?

A.3. The U.S. exclusion list will not harm U.S. exporters. It does not inhibit commercial activity, but safeguards particularly sensitive technology. Our exclusion list frees up the overwhelming majority of items for ICT. For example, in the case of IL 1565 (computers), we extended to all exporters the benefit of not having to apply for an Individual License for computers having a PDR up to 2000. This benefit is currently granted in the United States only to holders of distribution licenses after rigorous screening of the exporter and foreign consignees. Of the 114 Industrial List items, the United States is excluding only the 16 most critical items. Over two-thirds of the entries on our exclusion list are partial entries, reflecting the leading edge of technology, items with low export volume (and low commercial significance), items having primarily military applications, or items with an unduly high risk of diversion due to strong East Bloc demand. In general terms, the items in the exclusion list are often used in weapons delivery systems such as missiles, aircraft, or submersibles or in intelligence-gathering applications.

We have already successfully harmonized our lists with major COCOM trading partners such as Japan and Canada. We are working to harmonize our list with other COCOM members. We recognize the importance of such efforts so that U.S. exporters will not be disadvantaged.

The COCOM-agreed procedural safeguards include:

-- An Importer Statement on existing commercial documents acknowledging the controlled nature of the goods, and promising not to re-export them to an ineligible destination without prior authorization from the appropriate national authority;

-- An Exporter Declaration on existing commercial and official documents accompanying the shipment acknowledging the controlled nature of the goods, and stating that the goods can go only to specified eligible destinations and cannot be re-directed to ineligible destinations without prior approval from the appropriate national authority;

-- Record-keeping and Inspection Requirements obligating parties exporting or importing goods to keep records of each transaction made under the ICT system, and to make these records available for inspection by national authorities; and

-- Re-routing Requirements obligating parties directing the re-routing of goods to ineligible destinations to notify the relevant authority in the transit country and obtain the relevant prior authorization from the appropriate national auhthority. Parties re-directing goods to eligible destinations must include a new exporter declaration, and obtain a new importer statement from the parties receiving the re-routed goods.

-- Legal Authority, the ICT system provides the necessary legal authority to prohibit the diversion of items exported under this system and to apply appropriate sanctions in the event of non-compliance.

The procedural safeguards are non-binding guidelines subject to national discretion in actual implementation. COCOM is a voluntary organization, based on consensus. Only COCOM agreements on exports to proscribed countries are binding, not agreements on trade with non-proscribed countries. We were able to obtain COCOM-wide agreement to accept these safeguards as guidelines, which the members would bear in mind when implementing their ICT systems. We have worked closely with other COCOM members to encourage harmonized implementation of all the procedural safeguards.

Q.4. The United States went to COCOM insisting on differentiation of trade between the East Bloc and Soviet Union, and requiring "end use assurances" from East Bloc governments in return for liberalized trade. Instead, a goal of decontrol to the "PRC Green Line" for the entire Soviet Bloc was set. What justifies such a goal? Is there any basis for such an agreement other than European political priorities?

A.4. At the February special session of the COCOM Executive Committee, the U.S. presented interim proposals that called for both streamlining of the dual-use control list for all proscribed countries and more favorable treatment for Eastern European countries that adopt safeguards against diversion. We suggested that those Eastern European countries receive a presumption of approval for exports at roughly the China Green line level, as appropriate for the specific strategic concerns related to Eastern Europe.

Members identified three priority sectors for streamlining -- computers, telecommunications and machine tools. In those three sectors, technical working groups were instructed to use the China Green Line as a reference point for decontrol or more favorable treatment. These groups are to consider all existing proposals, including those of the U.S. While most members want the emphasis to be on streamlining the controls as they apply to all proscribed countries, they have not rejected the possibility of more preferential treatment for some countries. Along with the commitment to streamline the controls, members agreed to consider whether more favorable treatment might be accorded countries that adopt safeguards against diversion of controlled goods and technology.

We have already given several interested Eastern European countries an outline of what we consider to be the essential elements of a safeguard regime. We have offered to hold working level bilateral discussions in Washington to discuss how these elements can be effectively adopted.

Our COCOM Allies' emphasis on streamlining the control list as it applies to all proscribed countries, including the USSR, stems largely from their view of the criticality of the technology that is currently below the China Green Line. Many of the Allies believe that this technology would not damage Western security if released. Our European COCOM allies may have a somewhat different political perspective on the recent reforms in Eastern Europe and the USSR and face somewhat different domestic political pressures from those in the U.S., but we all agree that COCOM is, and will continue to be, an important element in the protection of our mutual security. In light of the dramatic changes in Eastern Europe and the Soviet Union, the task before us is adaptation, not abolition.

Q.5. The "Green Line" was established for China on grounds that the higher levels of technology that could be shipped would not soon make China a superpower competitor nor would they be diverted to the Soviet Union. How can it possibly make sense to decontrol to that level for the Soviet Union itself? Even in the case of Eastern Europe, is it the assessment of the intelligence community that reliable diversion channels in Eastern Europe are likely to close any time soon? Is there any basis for confidence in end-use assurances from East European governments?

A.5. As noted in the response to the previous question, we have not made a decision to decontrol technology up to the China Green line for the USSR. We are, however, committed to adapting COCOM controls to the changed strategic environment. The current U.S. interim streamlining proposals for adaptation do not include decontrol to the China Green Line, even for Eastern European countries that adopt safeguards against diversion. However, the current proposals are "interim" because we are in the process of completing a Presidentially-mandated comprehensive review of COCOM policy. That review includes an assessment of the impact on our security of increased levels of technology transfer to the USSR and Eastern as well as an examination of the intelligence networks among members of the Warsaw Pact as they relate to illegal acquisition of controlled technology.

Based on the findings of the review, we will formulate comprehensive proposals for the modernization of COCOM. While we cannot pre-judge the results of the review, we expect it will provide a strategic basis to justify support for significant relaxation of the current COCOM controls. The exact extent of the relaxation in the U.S. proposals will be determined based on what the comprehensive review identifies as our strategic concerns in the 1990s and beyond.

Regarding the intelligence linkages among Warsaw Pact members that have been used as channels for illegal acquisition of controlled technology, several Eastern European states have said they are cutting those ties. Their ability to do so effectively has not yet been determined. It should be noted, however, that Eastern European countries have an excellent record of protecting legally acquired controlled technology. The exact technical parameters and the degree of preferential treatment will depend on the outcome of the presidentially mandated strategic review and further consultations with our COCOM allies.

Q.6. I understand the need for a political response to Eastern Europe and even to the Soviet Union in response to changes in government structures and external policies. But isn't the present policy being driven entirely by politics rather than national security or self-interest?

A.6. No. The policy proposals for the adaptation of COCOM are being developed in response to changes in our national security concerns (and those of our Allies) which underlie the COCOM controls. National security export controls must be based on a coherent and current assessment of the strategic consequences of the transfer of sophisticated technology to the USSR and Eastern Europe. In light of the remarkable changes that have occurred over the last few months, the comprehensive national security review of COCOM policy ordered by the President is an absolute necessity. We certainly do not want export controls to impede our support for reform outside of the COCOM framework or to disadvantage U.S. exporters, but at the same time we cannot sacrifice national security. Thus, before significantly modifying our interim proposals advanced at COCOM in February and making comprehensive proposals for the adaptation of COCOM, we will wait for the results of the presidentially mandated review.

Q.7. Does State support the establishment of BXA export control attaches in our embassies in Budapest, Warsaw and Prague? Is this not a critical element of any reliable safeguards regime in those countries?

A.7. Our export control dialogue with Hungary, Poland and Czechoslovakia is just beginnning. We are to hold detailed working-level discussions on export control safeguards with the Hungarian, Polish and Czechoslovakian governments in the near future. In the course of our discussions, we will have a better chance to assess their needs and may determine that those governments need specific technical assistance in implementing credible safeguards regime.

We do not now have sufficient information to determine what resources are needed at our Embassies in these countries. For this reason, we believe it is premature to assign export control attaches in our embassies in Budapest, Warsaw and Prague. We do not wish to invest personnel or any other scarce resources in Eastern Europe before we have the information to define the needs adequately and respond with precision.

Q.8. If we decontrol the major part of trade within COCOM, which is most of the high technology world trade, how much incentive will be left to pursue the streamlining of the COCOM list, which has long been on COCOM's agenda?

A.8. It is true that intra-COCOM trade accounts for a large percentage of total world trade, but implementation of virtually license-free intra-COCOM trade will not remove the incentive to streamline the control lists. First, the markets of Eastern Europe and the USSR are becoming more attractive to COCOM member exporters. They do not want to be excluded from access to a perceived potentially large market. COCOM is, of course, guided by strategic considerations, not commercial, but to the greatest extent possible without undue risk to national security, we want to ensure that COCOM controls are not a barrier to commercial trade. We must remove items from the list that are no longer strategically critical or are available off-the-shelf from a variety of suppliers. Second, license-free intra-COCOM trade will affect trade only among COCOM members, not between COCOM members and other Western countries -- which also accounts for large volumes of international trade. The fact that COCOM controls apply to an item generally means that some type of license is required for export even to non-proscribed destinations. Thus, again the incentive remains to continue to streamline the list.

Q.9. What are the policy differences dividing Commerce and State concerning jurisdiction over many types of commodities, such as missile technology and other items controlled on both the dual use and munitions lists?

A.9. There is no intentional overlap between items on the CCL and the USML. Occasionally, a company will have a question as to whether its product would be considered as a defense article or defense service under Section 120.3 of the International Traffic in Arms Regulations (ITAR). Under these circumstances, the company may ask for a "commodity jurisdiction" review, or CJ, to determine whether it falls under the regulation of the ITAR or the Export Administration Act (EAA). US Government agencies--including the Department of State---may initiate a CJ as well.

The Missile Technology Control Regime (MTCR) covers commodities that fall on the munitions list as well as on the Commodity Control List (CCL). There is no overlap as to where these items are controlled. The Department of State oversees the implementation of the MTCR.

Q:10. In light of the proposed changes within COCOM concerning exports to Eastern Europe and the Soviet Union, what is your definition of "national security" as it applies to the control of exports to (a) Eastern Europe; (b) the Soviet Union; and (c) country groups T and V? Will the U.S. give non-COCOM free world countries e.g., India and Brazil, the same or better licensing treatment concerning items controlled for national security purposes as Eastern Europe countries will receive? Why or why not?

A.10. National security in the context of export controls is broadly defined in terms of the level of threat posed to our national defense capabilities by an export of strategic technology. In Eastern Europe, our concerns are greatly reduced by recent events; these countries do not possess military capabilities that threaten us or our COCOM Allies, and they are increasingly unlikely to play a positive support role in the utilization of Soviet force. The major concern is the possibility of diversion to the USSR.

In the Soviet Union, we remain concerned about direct military capabilities. Our defense capabilities that deter the Soviet use of their capabilities depend on our superior technology. Through our export controls, we seek to maintain an acceptable edge at an acceptable cost (in terms of both burden on U.S. industry and burden on the defense industry to continually improve the technology of our defense base). The threat posed by the USSR is changing and export controls should be modified to reflect that change, but we do not believe the situation in the USSR is comparable to that in Eastern Europe.

For the most part, free world destinations are subject to national security export controls only to the extent necessary to ensure acceptable end-use, to maintain a record of transaction and to provide a vehicle for enforcing re-export regulations. Decontrol in COCOM will result in a reduction of the licensing requirements for free world exports. However, the national security controls maintained in cooperation with other COCOM members do not cover all our export control concerns. For example, the problem of proliferation of nuclear and missile technology and of chemical and biological weapons precursors is not addressed through COCOM controls. We will ensure that these concerns continue to be addressed through other means.

Responses to Written Questions Posed by the Committee
(Testimony date: March 28, 1990)

by Paul Freedenberg
International Trade Consultant
Baker & Botts

Response to Senator Riegle's Question

Q: In his testimony Mr. Perle recommends that the Congress amend the current foreign availability provisions of the Export Administration Act because under the current provisions the Department of Commerce can make unilateral decisions on foreign availability. He contends that Commerce:

> "need not consult seriously with the Department of Defense or for that matter anyone else. It can find foreign availability even when the intelligence community finds the opposite."

Do you agree with that criticism of the current foreign availability procedures? If not, why not?

A: I strongly disagree with Mr. Perle's criticism of the current foreign policy availability procedures. As a former Under Secretary for Export Control, I can say with confidence and intimate knowledge of the subject that all my experience with the foreign availability process points to the opposite conclusion. The major criticism that I received was that I was too solicitous of DoD opinion and that I refused to reach conclusions in foreign availability cases until I was absolutely confident that Commerce had reconciled its views and conclusions with those of DoD and the intelligence community. The fact that the silicon saw case took two years to conclude and that the decontrol of the 80286-based microcomputer took almost 18 months and two separate Administrations would tend to support my portrayal of the process. Furthermore, in my experience neither DoD nor the intelligence community was particularly cooperative in doing analysis or supplying information for foreign availability studies. That is why these studies took longer than they should have. Add to that the fact that the CIA came up with new information even after the President had rendered his decision in the "wire bonders" case, and one begins to appreciate the truth of the contention that, if anything, the Commerce Department did -- and still does -- place great stress and credence on contentions of DoD and the intelligence community.

Response to Senator Garn's Questions

Q1: You say in your written testimony that we should give the job of controlling exports to either BXA or DOD. In terms of resources, authority and transfer of functions, what would it take for either of these organizations to do the job successfully?

A1: I certainly think that BXA currently has both the budget and the resources to do a first class job of controlling exports. That is why I argued that we no longer need two agencies doing exactly the same job. DoD involvement is redundant and unnecessary. If BXA were to be given the exclusive job, I would think that the current budget would suffice. However, it would be useful to authorize higher grade levels for BXA engineers in order to attract an even better quality of analyst and to help recruit high-quality analysts from other departments.

I do not recommend that DoD be given the job. But if it were, it would need a substantial increase in personnel and enforcement staff -- on the order of a three-fold increase of personnel and budget.

Q2: The alternative I am proposing is to put a cabinet level OSTT in charge. Do you think a specialized agency with this higher status could do a better job than a subcabinet level BXA?

A2: Yes, I do think that the proposed OSTT could do the job better. Higher status could be a valuable asset. This was true when the new Under Secretary of BXA was created. I can verify that from personal experience. In today's world, technology transfer and export controls certainly justify cabinet-level attention, and the proposed OSTT would certainly provide that. Otherwise, there will always be the danger that critical decisions on technology transfer will be subordinated to trade promotion or other considerations.

Response to Senator Cranston's Questions

Q1: As the former Under Secretary of Commerce for Export Administration, you are very familiar with the administration of the EAA. Could you comment on the interagency process; Does it work adequately? Should it (or could it) be better defined by statute?

A1: My feeling is that the interagency process does not work adequately. It could be better defined by statute. Particularly, I would recommend either adopting the single agency concept proposed in the OSTT by Senators Heinz and Garn, or I would say one needs to the degree possible to get rid of redundancy. A third, less satisfactory alternative, would be to constrain the Department of Defense to general exception cases and allow all national discretion favorable consideration cases to be processed by the Department of Commerce.

Q2: During your tenure, were there problems regarding jurisdiction between Commerce and State? If so, how were they handled and would your recommend any changes to the process?

A2: There were problems of jurisdiction with the Department of State. They generally centered around commodity jurisdiction issues. As one of my final acts as Under Secretary, I issued regulations stating that the Department of Commerce would no longer defer automatically to the Department of State on commodity jurisdiction issues. Previously that had been part of Commerce Department regulations. I think what is lacking is an interagency dispute resolution mechanism for commodity jurisdiction conflict resolution. It would be fairly easy to do such a thing. The only question would be what the time limits would be, and I would recommend that those time limits be short--such as 20 days with an escalation process of a minimum of 20 days up through the system. If it were escalated all the way to the Secretary's desks, it likely would be resolved long before it got there since the majority of these cases are simple turf battles. It would be useful for Congress to legislate such an escalation process, although on principle I do not like micromanagement. Given past failures, however, this is a case where micromanagement is necessary.

Q3: In your opinion, what does the Defense Department contribute to the export control regime? What should it contribute? Would you recommend any changes to current law regarding Defense's role?

A3: I think the Defense Department has a high degree of technical expertise that it can make available to the licensing process. It is not necessary, however, for DoD to look at each and every license to the East, or for DoD to have a veto over licensing decisions. Commerce has been designated as the lead regulatory agency in export control matters. Thus, Commerce ought to have final say, and it ought to be able to call upon DoD's considerable expertise as appropriate. The current situation is a bad compromise. It encourages DoD to involve itself in minutiae and take a bureaucratic interest in second-guessing Commerce. This results too often in bureaucratic gridlock, which unnecessarily slows the system and frustrates U.S. exporters as they lose sales to their foreign competitors who are not similarly burdened by redundant regulatory agencies and warring bureaucracies. Obviously, this system is crying out for change. Senators Garn and Heinz's proposed Office of Strategic Trade and Technology would be one clear and effective solution to the current system's problems.

Q4: Do you believe the current list of controlled countries is still relevant in light of the changes in the Soviet Union and Eastern Europe? What about the criteria used to determine if a country is added or deleted from the list -- would you recommend changes?

A4: I do not believe the current list of controlled countries is still relevant in light of the changes in Eastern Europe. Obviously, in a very short time Hungary, Czechoslovakia, and Poland should be removed from the list. However, the Administration already has the authority to do so under current statute. The question of the German Democratic Republic will be resolved shortly, simply because it will be absorbed into the Federal Republic of Germany. I do not recommend any changes. It is not a question of inflexibility caused by legislation, but rather one of the political will to do what is necessary.

Q5: Do you think the PRC Green Line is an appropriate level for national discretion exports to Eastern Europe? Higher? Lower? Are there any specific items at or below the Green Line that you would not recommend exporting to the emerging democracies of Eastern Europe?

A5: I believe the PRC Green Line is an appropriate level for national discretion exports to Eastern Europe. However, as I said in my testimony, I believe civilian telecommunications should be decontrolled altogether.

Q6: In your opinion, would it be helpful to the operation of the export control system if Commerce had a permanent representative at CoCom?

A6: It would be extremely helpful to the operation of the export control system if Commerce had a permanent representative at CoCom. Currently, the Departments of State and Defense have representatives there, but there is no representative from the Department of Commerce. Consequently, the business perspective and the analytical capability of Commerce are excluded from many judgment calls made on the spot in particular CoCom cases. Obviously, Commerce's opinion can be obtained through cable, however, since the U.S. Government has already seen fit to authorize the Department of Defense being stationed in Paris, there certainly is no reason why the Department of Commerce should not also have a representative to present the civilian and industrial perspective.

Q7: There are those who say CoCom is in danger of falling apart if the U.S. isn't more flexible. Do you agree with this, and what policies would you recommend the U.S. take to CoCom?

A7: I have maintained in my testimony that CoCom is in danger of falling apart if the United States is not more flexible. I think that the United States needs to seriously evaluate its objectives at CoCom and make the firm decision that it is ready to control fewer products with more effective controls. Also, it ought to understand that the purpose of CoCom is essentially today to deny the Soviet Union the technology to advance its military capability. That can be done by emphasis on technology rather than products. Ever since the Bucy Report in 1976 this concept has been widely understood in the U.S Government. Unfortunately, however, it has not been applied. The 1990s would certainly be a time to apply it, particularly because experience has shown that the Soviets are very poor at reverse engineering microelectronics. Therefore, much higher levels of computers and telecommunications, for example, could be sold without fear that the Soviets would be able to take them apart and duplicate them.

Q8: Do you support a loosening of controls to the Soviet Union? Should there be a differentiation between the USSR and Eastern Europe?

A8: Clearly there ought to be a loosening of controls to the Soviet Union. but, given the level of development Eastern Europe, particularly those countries that are willing to undertake safeguards should be granted a higher level of technology--what is known as "differentiation." This does not mean, however, that it is in our interests to keep the Soviets from getting those technologies that would liberalize their society. In particular I am thinking of telecommunications, which has a clear democratizing and pluralizing effect on societies that have free access to telecommunications.

Response to Senator Kerry's Questions

> Q1: What are the principal differences between the U.S. and its COCOM partners in terms of the levels of technology we seek to decontrol to Eastern Europe?

A1: The principal differences between the U.S. and the CoCom partners with regard to the levels of technology we seek to control in Eastern Europe focus on whether there should be differentiation below the Green Line for Eastern Europe and the Soviet Union, and, second, whether we should go above the Green Line in differentiation at all. In general, the U.S. position is that there ought to be differentiation below the Green Line for the Soviet Union -- that is, in general, the U.S. proposal would be that the Eastern Europeans could get the technology below the Green Line either decontrolled or favorable consideration, but the Soviets would have access to far less technology even below the Green Line and none above that line.

> Q2: Are these differences great enough to threaten the future of COCOM, or at least our Allies' willingness to continue to cooperate with the U.S. in controlling exports to the East?

A2: The differences with our allies are potentially great enough to threaten the future of CoCom if our allies perceive that the United States is not adapting to the new situation in Eastern Europe and the Soviet Union. Particularly, if it seems that we are wedded to ideas that are no longer relevant and control levels that no longer reflect reality, it will be increasingly difficult for our allies to convince their business communities to go along with the rules that CoCom imposes. If that happens, I would predict that there will be increasing differences in the way we enforce the rules and increasing differences in interpretation of what the rules mean, which would eventually lead to a break-up of the CoCom organization.

> Q3: Do you believe our COCOM partners have adhered to COCOM rules generally or selectively? Do you know of any examples of European or Japanese manufacturers having sold products to Eastern Europe which U.S. exporters have been denied? (Note: Seagate Technology, which manufactures disk drives that cannot be sold to Eastern Europe because of COCOM controls, obtained a copy of a West German Government-approved export license to ship its drives to Poland.)

A3: I believe that our CoCom partners have generally adhered to the CoCom rules and have tried to enforce them. As I said in my testimony, it is remarkable that we have had as high a degree of cooperation from our allies given the fact that CoCom controls of hundreds of billions of dollars of exports each year. One area, however, that has not an equal application of the rules has been the machine tool list. The unequal interpretation of the machine tool list I believe resulted directly from the fact that this list had not been reviewed and revised for 16 years. Consequently, there was virtually nothing that Western manufacturers made that was legal to sell to the Eastern Europeans and the Soviet Union. That led to creative interpretations of the lists and to what one might call a degree of cheating on the list. Hopefully, that will be changed by the current machine tool review and revision, which should bring a number of products back into availability for Eastern Europe and the Soviet Union.

Q4: Do you believe that publishing the COCOM industrial list (the list of "dual-use" items with a commercial and possibly military application) and making it the only list the U.S. can use to control exports would help "level the playing field" for U.S. exporters? Would making COCOM into a licensing agency for all the COCOM nations help level the playing field as well?

A4: Publishing the CoCom industrial list and making it more widely available to its constituent industrial membership would help to level the playing field for U.S. exporters. The more information that is available the better, from my perspective. However, CoCom is only as strong as its constituent members, and there is no support whatsoever for creating a supranational licensing agency with the sovereign capacity to tell companies what they can and cannot export. Therefore, I believe the proposal to make CoCom itself enforce the list is a non-starter.

Q5: Is the U.S. losing out on new markets in Eastern Europe, the U.S.S.R. and in Free World countries because of export controls?

A5: There is the real potential that the U.S. could lose out on new markets in Eastern Europe and the Soviet Union because of export controls. This is because the United States, particularly the Defense Department, has historically interpreted the CoCom list most rigorously. That leads to the potential situation where, even after the list has been revised, the U.S. still turns down companies on a case-by-case basis for licenses to Eastern Europe and the Soviet Union that our allies approve. That will accomplish nothing other than to deprive U.S. exporters of the new potential markets. In an era when threat perception of the Soviet Union is at an all time low, and when there is literally no perception in Western Europe that the Eastern Europeans pose any sort of a threat, it will be virtually impossible to imagine a rigorous and tough enforcement of the CoCom list by our allies. Nonetheless, given the history of the Defense Department's licensing approach, I could easily imagine our licensing standards to be tougher and more rigorous than those of our allies, consequently causing U.S. exporters to lose potential business in that part of the world.

Chuck Hough's (National Association of Manufacturers) Answer to Question from Senator Donald W. Riegle, Jr.
Hearing to Reauthorize the Export Administration Act
March 28, 1990

Question: I understand that present U.S. proposals for decontrolling technologies due to the changes taking place in Eastern Europe and the Soviet Union call for differentiating what can be sold to the Soviets as opposed to what can be sold to other former Soviet bloc countries. Do you think such a policy of differentiation make sense and if so can it be administered effectively? Why or why Not?

Answer: The recommendations contained in our testimony outline a basic approach to liberalizing East-West controls for countries where such action is warranted. The Soviet Union should not be left off this list, but it obviously presents a more complex problem for our control policies than Eastern European nations. The Soviet Union is the one nation in the world that represents a military threat to the very existence of the United States and it therefore makes sense to differentiate between control policies towards it and Eastern Europe.

Chuck Hough's (National Association of Manufacturers) Answers to Questions from Senator Alan Cranston Hearing to Reauthorize the Export Administration Act March 28, 1990

Question 1: Please comment on the export control reforms made in the 1988 trade bill. Were the changes helpful to your industry and has the Administration's implementation of the Act and Congressional intent been satisfactory?

Answer 1: Several changes in the EAA contained in the 1988 Trade Act have been very useful. These would certainly include the provisions on reexports and on parts and components. Our biggest disappointment in this area is the lack of progress toward a license free COCOM along the lines of our treatment of exports to Canada. We still are a long way from achieving this goal which is one of the reasons we support legislation this year mandating a license free COCOM by the end of 1991. Moreover, we must point out that there are a number of provisions of the 1988 Trade Act that have not been implemented in regulations.

Question 2: Do you support a license-free CoCom? How much of your industry's business is with CoCom countries?

Answer 2: See answer to question #1.

Question 3: Do you think the export control regime, including multilateral coordination, would be enhanced by placing a Commerce Department official at CoCom?

Answer 3: We would support placing a Commerce Department official at COCOM. In fact, we believe that fundamental reform of the export control system must include providing clear Commerce Department authority over the control system governed by the EAA.

Question 4: Has your industry experienced problems due to jurisdictional disputes between Commerce and State? Would you support a provision clarifying dual-use and munitions' controls and setting up a dispute resolution mechanism?

Answer 4: Our testimony included a case example of the problems encountered by a U.S. exporter in a jurisdictional dispute between Commerce and State. A memo describing this case is attached. It is a perfect illustration of why we favor centralize processing of export licenses within the Commerce Department. Companies should not be subject to fines and penalties simply because they are caught between bureaucracies that can't decide who has jurisdiction over a product.

Question 5: What is the average product life cycle in your industry? Does lack of indexing or removal of items on the CCL harm your industry?

Answer 5: The product life cycles for many high tech products is now down to about 18-20 months.

Chuck Hough's (National Association of Manufacturers) Answers to Questions from Senator John Kerry

Hearing to Reauthorize the Export Administration Act
March 28, 1990

Question 1: What are the principal differences between the U.S. and its COCOM partners in terms of the levels of technology we seek to decontrol to Eastern Europe?

Answer 1: The NAM of course is not privy to the details of the recommendations being presented by various governments in COCOM.

It is our understanding, however, that the government of many Western European nations wish to see decontrol of trade with Eastern Europe at or above the so-called China greenline and no differentiation for the USSR. The U.S. does not want to go this far and wants differentiation.

Question 2: Are these differences great enough to threaten the future of COCOM, or at least our Allies' willingness to continue to cooperate with the U.S. in controlling exports to the East?

Answer 2: Yes, the differences between the U.S. and other COCOM countries do seem to represent a threat to the continued existence of that organization. A breakdown of a multilateral approach to export controls would certainly be to nobody's advantage either from a commercial or strategic standpoint. One of the most frustrating aspects of U.S. export control policies for American business is our frequent unilateral rather than multilateral approach to controls in both the national security and foreign policy areas. We need to avoid a unilateral, minimalist approach to COCOM as we seek to address the major changes now going on in Eastern Europe.

Question 3: Do you believe our COCOM partners have adhered to COCOM rules generally or selectively? Do you know of any examples of European or Japanese manufacturers having sold products to Eastern Europe which U.S. exporters have been denied? (Note: Seagate Technology, which manufactures disk drives that cannot be sold to Eastern Europe because of COCOM controls, obtained a copy of a West German Government-approved export license to ship its drives to Poland.)

Answer 3: Basically, other COCOM nations have tended to interpret the rules in favor of commercial consideration, while the U.S. has leaned toward national security concerns. Moreover, if other nations have been selective in adherence to COCOM controls, it probably is due to their frustration over the inability to get the U.S. to agree to sensible steps to update the control list.

Question 4: Do you believe that publishing the COCOM industrial list (the list of "dual-use" items with a commercial and possibly military application) and making it the only list the U.S. can use to control exports would help "level the playing field" for U.S. exporters? Would making COCOM into a licensing agency for all the COCOM nations help level the playing field as well?

Answer 4: The NAM supports steps to increase the transparency of COCOM by, for example, publication of the international control lists. Even more important, NAM supports legislation mandating that the U.S. Control List be harmonized with the COCOM Industrial List. It is only logical that if a product or technology is treated as a dual use item under COCOM it should be treated in the same way under the U.S. control system. We also think it is extremely important that the Commerce Department be given equal authority as the State Department in determining whether a product should be placed on the Control List or the Munitions List. At present, the Commerce Department does not have such authority.

Question 5: Is the U.S. losing out on new markets in Eastern Europe, the U.S.S.R. and in Free World countries because of export controls?

Answer 5: Yes, we are losing out in Eastern European markets not only because of export controls, and the constant uncertainty surrounding our actions in this area, but also because of our lack of a competitive export finance system.

Chuck Hough's (National Association of Manufacturers) Answer to Question from Senator E.J. (Jake) Garn
Hearing to Reauthorize the Export Administration Act
March 28, 1990

Question:	Your organization's proposals urge Congress to give the Commerce Department clear and absolute authority over dual use commodities in order to end inter-agency conflicts. Would your organization support giving that same authority to a cabinet level agency, such as the OSTT?
Answer:	We do not favor an OSTT. We are concerned that such an agency will pay little attention to balancing U.S. commercial interests against strategic interests. We suspect that an OSTT would be far more adept at controlling than balancing. The very words--strategic trade--tend to obscure the debate over one of the principal functions of such an agency--namely, the control of commercial trade. When 50 percent of our manufactured exports outside of those to Canada need prior approval from the U.S. Government, this is a point that needs to be illuminated not obscured. We wonder if a title such as the Office for the Control of Commercial Exports might not open up a whole new perspective on the debate over U.S. export control policies.

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Statement
of

Edward J. Black
Vice President & General Counsel
Computer & Communications Industry Association
on
The Reauthorization of the Export
Administration Act

submitted to the
Subcommittee on International Finance
and Monetary Policy

Senate Committee on
Banking, Housing and Urban Development

U.S. Senate

Washington, D.C.

March 28, 1990

Mr. Chairman, Members of the Committee, I appreciate the opportunity to present testimony to you on this most important and timely subject. The importance of export control policy in general, as well as the rapidly evolving events in Eastern Europe, make the Committee's attention most appropriate.

The Computer & Communications Industry Association, whose member companies have a vital interest in our export control policies, is comprised of manufacturers and providers of computer, information processing, and communications-related products and services. Ranging from young, entrepreneurial firms to many of the largest in the industry, CCIA's members collectively generate annual industry-derived revenues in excess of $145 Billion and employ over 1,000,000 people, CCIA provides a unique forum for the discussion and resolution of strategic industry issues at the CEO level. CCIA member companies provide large mainframe, mini and micro computers and systems; semiconductors; peripheral equipment; software products; communications equipment, systems, and services; office and factory automation systems; and third party leasing and maintenance services.

EXPORT CONTROLS IN A CHANGING WORLD

In order to understand how CCIA has arrived at our conclusions about what Congressional action must be taken to ensure a reasonable and responsive export control policy it is important to briefly review what has, and has not, taken place during the 1980s. *Export control policy has changed very little over the past decade.* Because of the realization that direct changes to policies relating to East/West trade would be politically difficult to secure, and because there was only minor interest in trade with the East bloc, the policy initiatives of American industry and of Congress were focused on deregulating the export control system and lessening its burden. A review of the '85 and '88 export control legislation reveals this emphasis. Nevertheless, many of those involved in the export control world recognized the static and outdated nature of our control list. Although Congress has made several attempts to force a streamlining of the control list few changes were actually implemented.

We have, however, reached a point where reforms in export control policy are so overdue that *continued failure to address them undermines the legitimacy and viability of the entire control structure and our competitiveness. This would be true even if dramatic changes in Eastern Europe had not taken place.* Among the broad changes which are taking place, and which have not been properly taken into account by the export control system and our control policies, are :

- growing *globalization* of business and trade;
- *diffusion of technology* and technological skills to an increasing number of countries;

- *increasing competition* to, and the shifting of competitive advantage away from, some U.S. industries;

- *rapid evolution of products and technology*, and an increasing need to quickly penetrate world markets;

- *rapidly changing military and commercial requirements;*

- *physical obstacles to effective control* (e.g. miniaturization) are outpacing our ability to control items that should be controlled;

- growing *importance of export competitiveness* to the economic health of key industries and of our nation

CHANGES IN EASTERN EUROPE

These significant developments should have compelled significant export control policy changes even before the dramatic changes in Eastern Europe. However, the changed political situation in Eastern Europe gives tremendous momentum to, and creates an even greater urgency for, such reforms.

We all recognize that dramatic political, military and economic changes are taking place in Eastern Europe. The reality behind these changes need to be reflected in our policies immediately. It is important that we are fully aware that:

- extensive and *largely irreversible fundamental political changes* have taken place in many of the East European nations and the Soviet Union, and free elections are widely planned;

- nearly every national leader in the former Eastern bloc countries has recently been replaced, with the exception of Gorbachev;

- the *nature of the military threat has changed dramatically*, because of the de facto dissolution of the Warsaw Pact as an effective military alliance, and the military vulnerability and weaknesses caused by ethnic divisions within the bloc nations;

- severe (short term and mid-term) economic dislocation in Eastern Europe is inevitable, and *Western assistance is needed* in the transition to market economies;

- this region has the *most dramatic market growth potential of any region in recent history*, with its pent-up demand, large population, and potential to develop into a consuming and producing trading partner;

* *opportunies are tremendous* for many of these countries to develop into political democracies and free market economies;

* *increased contact with Western institutions,* products, technology and business techniques can provide a strong impetus for internal reform;

* the development of market economies and political freedom will be extremely difficult without substantial *development of key sectors* of the economy, including telecommunications, transportation, agriculture, and banking;

* current restrictions on technology transfer make it extremely *difficult for the U.S. private sector to play a significant role* in providing the economic support and investment necessary to sustain the economic and political reforms underway;

* the U.S.-led consensus in *COCOM is seriously eroding*, and many of our partners no longer see the need for the massive control system we now have.

* the economic opportunities for other Western nations to enter these markets in a major way are irresistible, and if the U.S. restrains our companies unevenly, there will be *a massive adverse competitive impact.*

INDUSTRY'S BROAD CONCERNS

We are committed to ensuring that COCOM is an effective and credible multilateral control system. We believe there are core products and technologies which, if made available to adversary nations, could severely impair our military security, but the current system controls many non-critical products. To be effective, and not damaging competitively, it *is essential that control and decontrol decisions be made multilaterally congruent* in policy and practice. We believe that unless U.S. government policy is radically transformed, the frustration of, and pressures on, our allies to unilaterally liberalize, will become irresistable.

We share the general belief that recent developments in Eastern Europe promise to bring greater democracy and prosperity to many millions of people as well as less fear and insecurity to the world. In support of these goals, we urge the adoption of policies which will help stabilize these new governments, encourage privatization and capitalism, build up their civilian sectors and increase their economic ties to the West. In order to achieve these goals, it is *necessary to actively develop the major infrastructure sectors which are necessary to allow economic free market reforms to* *succeed.* This will not be possible without the transfer of many products and technologies currently prohibited under U.S. and COCOM regulations.

We remain concerned that the ability of U.S. companies to compete in the rest of the world, especially in our main European and Pacific rim markets, is disadvantaged by the burdens of the U.S. export control system which controls over 40% of all U.S. manufactured exports. The scope of our export control system, particularly what is controlled and the extent of regulation aimed at preventing possible diversion, is based upon our policy toward the Soviet Union and the controlled countries of the East bloc. Our assessment of the risks of diversion of products to these countries has had a major impact on our overall competitiveness. To the extent the actual security threat and dangers of diversion have lessened, *it is important that our West/West export control policies promptly reflect these changes* as well as our East/ West control policies.

We desire access to this major, newly emerging, Eastern European market. Given the size and importance of the East European market, no major industrial country or company can sensibly afford to forsake the opportunity to access such a market, especially if their competitors are entering it. The ability of U.S. companies to succeed in this market will depend greatly on the speed with which they can move and obtain early market share. The computer and communications industry has many thriving and energetic exporters who must export to survive and to generate the revenues to fund the research and development of new generations of products. We are concerned that in practice, if not formally, *U.S. companies will be more restrained from accessing this valuable new market than others because of the U.S. export control system,* and the continual delays and uncertainties surrounding interagency decision making.

Because major business decisions and commitments are difficult to make without some predictability and certainty, we will need reliable guidance as to the basic direction and pace of policy changes. If a case-by-case approach is used, the ad hoc results will not meet these needs. Experience has indicated that in practice there will be little meaningful change because cautious licensing officials will continue to use their vast discretion to slow changes. Without the *supportive and aggressive assistance and guidance of the U.S. Government* to help U.S. industry access this market, the slight preference for U.S. partners, which we feel now exists, can easily give way to European commercial dominance.

The necessity to cut our defense budget is increasingly apparent. Such cuts will create an urgent need for many advanced industrial and technological firms to further shift to civilian and commercial production. By assisting such firms to access world commercial markets, we will enhance our flexibility in cutting our defense budget and minimize the economic disruption caused by the abrupt shrinking of the defense sector. The health and competitiveness of these firms, which constitute much of our national security industrial base, will be even more dependent on their ability to sell in the world market. *The success of this transition, and the health of our defense-related industries, will depend in substantial part on the timely restructuring of our export control policies*. Continuing to maintain excessive controls would be far more damaging to our national security than reforming them.

ACTIONS NECESSARY TO DEVELOP AN EFFECTIVE AND DYNAMIC EAST/WEST TRADE POLICY

To legislatively ensure that the U.S. follows a reasonable East/West trade export control policy, CCIA has attempted over the past months to develop a formula for what levels of technology should be mandated to be decontrolled or to receive various types of expedited licensing for different Eastern European countries. However, it is not easy to reasonably specify what those levels should be at the time legislation is ultimately approved, although we do have some specific proposals. Beacause it is increasingly difficult to legislatively mandate specific deregulatory or decontrol levels as was done in past acts, it is most important for Congress to take two types of periodic action:

First, Congress should remove various statutory obstacles to the development of a flexible and responsive export control policy including fundamentally revising the policy making and bureaucratic structure now administering export control policy. *We need to simplify and streamline a complex process in order to eliminate bureaucratic deadlock, and to create a dynamic system that can make the reasonable and timely decisions necessary to adjust policies in a changing world.* Central to this goal is the need to make decision makers accountable for their actions by clarifying and consolidating within the Department of Commerce the diffuse authority and responsibility which now exists. Decision makers should be held fully accountable for any serious blunders and Congressional oversight of major issues and policies should be vigorous.

Second, *Congress must give a strong political signal of the direction in which it wants the Administration to go and demand that the Administration respond in a timely and forthcoming fashion.* It should indicate the levels of decontrol and deregulation it envisions, and provide some administrative discretion, but require explanations when these target goals are not met. Congress should prohibit controls unless the Administration certifies there is complete and effective multilateral congruency in the scope and operation of the control system. The Administration should be required to standardize its policies into guidelines and move away from the uncertainty of case-by-case review except at the highest levels of technology so as to provide maximum predictability and guidance to all concerned.

After a decade of bureaucratic stalemate in the Executive Branch and its failure to self-initiate the necessary changes reasonably required to respond to the rapidly changing world of the 1980s, we are not confident the necessary changes will be forthcoming in the 90s unless there is a fundamental restructuring of the way decisions are made and implemented.

The legislation passed by the Congress in 1985 and 1988 was necessary -- but not to remove legal obstacles to reform. It was necessary to mandate changes which a stalemated bureaucracy should have been making routinely, but which it had been unable or unwilling to make on its own. The legislation was valuable even though it has not been fully implemented, and we appreciate the changes which have resulted. However, managing the export control system through legislation is awkward, time consuming, and inevitably too late to be truly responsive. Therefore, although we are asking for some specific legislatively-mandated reforms we urge the Congress also to consider as essential the inclusion of provisions aimed at trying to "fix the system" so that the many adjustments which will be necessary in future months and years can be implemented in a reasonable and timely fashion.

RECOMMENDED CHANGES

* *Consolidate within Commerce final authority* to control all dual-use products and eliminate the overlap in license processing, foreign availability, CoCom list review preparation and authority, and classification authority;

* Allow interagency consultation to be sought by Commerce, but *eliminate any provision which requires concurrence or allows the exercise of veto authority by another agency,* and require a timetable and deadline for action when other agencies are involved;

* Require *a major streamlining of the control list,* with deadlines, initially aimed at *decontrolling items below the green line,* with a report justifying why any item below the green line is not decontrolled;

* Develop an automatic procedure to require a formal *review of the status of controlled countries* when any of the criteria established in the statute demonstrably changes, and the prompt redesignation of such country when appropriate;

* Promote *a "pro democracy" movement in CoCom* by requiring that CoCom periodically review the control list. To maintain controls on items under review a majority of the CoCom nations would need to reaffirm their support for controls. Increase the transparency of the process;

* Reaffirm the prohibition on unilateral controls, and extend that policy to require that *control procedures and policies must be essentially multilaterally congruent.* This should include our regime of export controls. The Secretary should be required to certify to Congress that they are congruent or that there is an essential reason why they are not. He must then evaluate the control and competitiveness impact of non congruent standards;

* Require the Administration to present to the Congress its strategic threat calculations, the rationale supporting them and how export control policy on which its overall export control policy was derived from it. Such an approach would be a change from the current system, which essentially continues to try to stop the sale of as much as possible;

* Require the Secretary to *prioritize the control list* and to create a core list of those select items where the impact of military use by an adversary would be irreversible and exceptionally damaging, and an explanation of how the core list relates to the strategic threat assessment;

* Require the Secretary to *identify key sectors* of the economies of controlled countries, such as telecommunications, consumer goods, and transportation which CoCom nations would actively *seek to develop*. The only limitation on the transfer of a wide range of advanced technological products would be the *bona fides* of the end user and end use. These sectors would also be target beneficiaries of the increased financing and aid which must also be made available;

* Require the Secretary to *identify those sectors* and end users which are so tied to and critical, to the military structures of a controlled country, or are special diversion risks, that advanced technology exports to them *would require special scrutiny and safeguards;*

* Require the establishment of a License Free Zone with no exceptions within one year of the passage of a reauthorization bill.

* *Eliminate the statutory prohibition on bulk licenses* for controlled countries; and

* Allow immediately the export under general license of a wide range of sales demonstration, training and after-sales support activities while overall licensing policy is being revised so that our companies can be in a position to respond to changes as they occur.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR RIEGLE FROM
MARK RYAN

MR. MARK RYAN
TESTIFYING ON BEHALF OF THE COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION (CBEMA)
MARCH 28, 1990

Questions from Senator Riegle

Q.1. We have heard complaints recently about an overlap of export controls between items on the munitions control list administered by the State Department under the Arms Export Control Act, and the commodity control list of dual use technologies administered by the Commerce Department under the Export Administration Act. Exporters have asserted that the Administration sometimes puts items on the munitions control list in order to be free from the reform procedures that Congress puts into the Export Administration Act in the trade bill.

Have you found that to be a problem? If so, what are your suggestions for resolving it?

A.1. Despite clear Congressional intent in the 1988 Trade Act, there has been little effort made to streamline either the Commodity Control List or the Munitions List. CBEMA heartily supports doing so. In an industry where product cycles are measured in months not years, it is critical that these lists keep at least some semblance of pace with the rapid advances in the high tech industry.

CBEMA supports streamlining the Commodity Control List by imposing deadlines for implementation of the already existing provision in the 1988 Act, reforming the procedures by which a West-West foreign availability finding is made and limiting the scope of the Control List only to those items contained on the International Control List.

As for the Munitions List, CBEMA supports developing a reasonable definition of a "defense article", providing for a fair and timely dispute resolution process, and limiting the scope of the Munitions List only to those items contained on the International Munitions List.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR CRANSTON FROM MARK RYAN

Q.1. Please comment on the export control system reforms made in the 1988 trade bill. Were the changes helpful to your industry and has the Administration's implementation of the Act and Congressional intent been satisfactory?

A.1 Historically, the Export Administration Act has taken us forward in incremental steps. CBEMA views the role of Congress in this process - both in the reauthorization process and in oversight of the act - as a great help. While the 1988 Trade Act, which was signed into law on August 23, 1988, took us forward there have been delays in implementation of that act. One example of a notable delay, from the standpoint of the high technology industry, is the absence of a definition of a supercomputer. As you know, the 1988 Act, requires a supercomputer definition to be published within 90 days after enactment. Today is March 28, 1990. To date, no definition has been published.

Q.2. Do you support a license-free CoCom? How much of your industry's business is with CoCom countries?

A.2. A CoCom license-free zone is one of CBEMA's top priorities. A vast majority of CBEMA's member company exports are exports to the 16 other members of CoCom. Given that the U.S. has limited funds to enforce export control laws, we believe those monies are best spent controlling sales to our adversaries rather than sales to our closest allies.

Q.3. Do you think the export control regime, including multilateral coordination, would be enhanced by placing a Commerce Department official at CoCom?

A.3. Absolutely. Given the key role the Commerce Department plays in administering the Export Administration Act, it seems not only natural but sensible to have them at the CoCom table.

Q.4. Has your industry experienced problems due to jurisdictional disputes between Commerce and State? Would you support a provision clarifying dual-use and munitions controls and setting up a dispute resolution mechanism?

A.4. If there is one problem that stymies our export control system up in knots and drives U.S. exporters to apoplectic states, it is probably jurisdictional disputes. At a minimum, the jurisdiction over dual-use items should be clarified and a reasonable definition of what constitutes a "defense article" should be developed.

Q.5. What is the average product life cycle in your industry? Does lack of indexing or removal of items on the CCL harm your industry?

Q.5. Product life cycle in the high technology industry are often expressed in weeks, not months or years. Given this fact, CBEMA believes it is very important for the Commodity Control List to be a fluid document which adapts to the rapidly changing nature of the industry.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR KERRY FROM
MARK RYAN

Q.1. What are the principal differences between the U.S. and its CoCom partners in terms of the levels of technology we seek to decontrol to Eastern Europe?

A.1. The CoCom high level meeting will not occur until early June, so it is difficult to say how far apart we are from our allies. However, we have been hearing that our allies are prepared to propose far more sweeping reforms of trade with the East than the U.S. is prepared to propose.

Q.2. Are these differences great enough to threaten the future of CoCom, or at least our Allies' willingness to continue to cooperate with the U.S. in controlling exports to the East?

A.2. I would not want to be in the position of forecasting the demise of CoCom. Historically the U.S. has lagged behind our allies in supporting export control reforms. However, at this time, the U.S. and our allies appear to be further apart than at any time in my memory.

Q.3. Do you believe our CoCom partners have adhered to CoCom rules generally or selectively? Do you know of any examples of European or Japanese manufacturers having sold products to Eastern Europe which U.S. exporters have been denied?

A.3. Much like laws, CoCom agreements are subject to varying interpretations by the administrators. The U.S. has tended to maintain the strictest interpretation of these agreements. The U.S. has also suffered most from internal agency delays in approving licenses. In answer to your second question, my company, Hewlett-Packard, discovered recently that our CoCom competitors were selling digital oscilloscopes at a level of 250 megasamples per second to Eastern Europe while we were selling at a much lower level of 50 megasamples. These competitors had managed to convince their governments that these oscilloscopes were not controlled by existing regulations. After a number of months, and a lot of internal back and forth among U.S. agencies, we received word from our government that it was appropriate to ship 250 megasample oscilloscopes.

Q.4. Do you believe that publishing the CoCom industrial list (the list of "dual-use" items with a commercial and possibly military application) and making it the only list the U.S. can use to control exports would help "level the playing field" for U.S. exporters?

A.4. CBEMA supports increasing the transparency of CoCom. Publishing international control lists as well as a sanitized form of CoCom general exception approvals and denials would go a long way toward helping U.S. exporters compete in foreign markets.

Q.5. Is the U.S. losing out on new markets, the U.S.S.R. and in Free World countries because of export controls?

Q.5. Yes, I believe we are. The major impediment to U.S. exports are in the process for developing proposals for CoCom controls and in the U.S. process for reviewing license applications for trade. The time it takes to issue an export license in a responsible way has a direct impact on the ability of U.S. exporters to get into new markets.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR GARN FROM
MARK RYAN

Q.1. On page 1 of your written statement you say that "CBEMA's members are committed to keeping sensitive goods and technologies out of the wrong hands." How would you define the threshold for dual-use commodities or technologies that should not be licensed for export to the Soviet Union? What are the key considerations?

A.1. Given the rapid changes occuring in Eastern Europe and the Soviet Union, CBEMA supports, at a minimum, the establishment of a new control level, incorporating a strong presumption of approval, up to the current China Green Line. This translates into a computer processing data rate (PDR) of 550. We also recommend a decontrol level for these countries to be set at a PDR of 156, plus the decontrol of all 80386-based personal computers. Key considerations for licensing dual-use items above these levels should include end-user safeguards, consignee reliability, civil-end use, and worldwide availability of the item.

Mr. Bill Burck
Testifying on Behalf of The American Electronics Association (AEA)
March 28, 1990

Questions from Senator Reigle

Q.1. We have heard complaints recently about an overlap of export controls between items on the munitions control list administered by the State Department under the Arms Export Control Act, and the commodity control list of dual use technologies administered by the Commerce Department under the Export Administration Act. Exporters have asserted that the Administration sometimes puts items on the munitions control list in order to be free from the reform procedures that Congress puts in the Export Administration Act in the trade bill.

Have you found that to be a problem? If so, what are your suggestions for resolving it?

A.1. Despite the Congressional reform efforts in the 1988 Trade Act, there have been only incremental results in efforts to balance the export control system. The existing problems of overlap and questionable jurisdiction in the present system are complicated by overly long and complex control lists. Furthermore, the review of these lists does not keep pace with the rapid advancement and commercialization of technology.

To address these problems, AEA supports continued and aggressive Congressional oversight; clear deadlines for implementing remaining provisions in the 1988 Trade Act; development of a procedure to index the lists to provide for systematic decontrol of non-critical items; and limiting U.S. dual-use list only to those items contained on the International Industrial List.

In the Munitions area, we recommend that a definition of a defense article be established, a clear and equitable dispute resolution process be established, and the scope of the munitions list be limited to only those items contained on the International Munitions List.

Questions from Senator Cranston

Q.1. Please comment on the export control reforms made in the 1988 trade bill. Were the changes helpful to your industry and has the Administration's implementation of the Act and Congressional intent been satisfactory?

A.1. U.S. industry strongly supported the export control reforms in the 1988 Trade Act. The implementation of these reforms has proven frustrating. Congressional oversight has helped identify significant delays and has been useful in prompting action. However, there are several items that have yet to be implemented. For example, the 1988 Trade Act mandated that a definition of a supercomputer be developed. To date, there is still no definition of a supercomputer.

Q.2. Do you support a license free COCOM? How much of your industry's business is with CoCom countries?

A.2. AEA views the creation of a license free zone as one of its top priorities. A specific deadline must be established in the EAA for elimination of all requirements for export to and among CoCom member nations. The vast majority of our members' exports are to the 16 member CoCom countries.

Q.3. Do you think the export control regime, including multilateral coordination, would be enhanced by placing a Commerce Department official at CoCom?

A.3. As the lead agency responsible for administering the control system under the EAA, it is essential that Commerce be represented full time at the CoCom headquarters.

Q.4. Has your industry experienced problems due to jurisdictional disputes between Commerce and State? Would you support a provision clarifying dual-use munitions' controls and setting up a dispute resolution mechanism?

A.4. There have been several instances of overlap including the ongoing case of commercial encryption. Companies should not be placed in a situation of not knowing who has authority to license their products, especially after being advised by a government agency. AEA strongly recommends that there be a dispute resolution mechanism and that there be a definition of a munitions item.

Q.5. What is the average product life cycle in your industry? Does the lack of indexing or removal of items harm your industry?

A.5. The trend for product life cycles in the electronics industry is towards increasingly shorter cycles. Given the diversity of products in the industry, it is difficult to estimate an industry average. For some products there is a very short life cycle (e.g. 6 months), while others may be longer (e.g., 24 months). Because the export control lists are overly long, complex and burdensome, indexing is essential if we are to achieve a balance between U.S. national and economic security. U.S. industry must remain strong and viable for a strong national defense. Increasingly, our economic health is dependent on international sales.

Questions from Senator Garn

Q.1. AEA's policy statement on East-West trade recommends allowing special and bulk license for Eastern Europe and the Soviet Union. But we can assume that initially most sales in these countries will be to state owned or controlled entities. How would a U.S. firm holding a distribution license be able to ensure that its foreign government consignee would not illegally use or reexport the commodity?

A.1. In order to be a first level consignee, both the license holder and consignee must agree to audits by the U.S. government. This not only guarantees the pre-approval screening process, but provides a process for scrutiny following the sale. In some ways, this affords more protection than a regular individual validated license, which may or may not require a post shipment evaluation.

Q.2. A key concern for telecommunications controls is the ability to gather intelligence information. How does industry propose that our intelligence needs be met if advanced fibre optics and switching systems are installed?

A.1. This assumes that such systems will deter our capabilities. It is technically possible to gather information from fibre optic systems. Furthermore, most of the monitoring is done at the switching centers. Any upgrade in transmission simply allows more calls to be handled over the same period of time.

Questions from Senator Kerry

Q.1. What are the principal differences between the U.S. and its COCOM partners in terms of the levels of technology we seek to decontrol to Eastern Europe?

A.1. The U.S. and other CoCom member governments are still preparing their proposals for the high level meeting scheduled for June. Consequently, it is difficult to say exactly what levels will be placed on the table for negotiations. However, in discussions with our industry counterparts in Europe we understand that many of the CoCom governments will table sweeping reform proposals. Based on these discussions, it certainly appears that these governments are prepared to advance reforms far beyond what the U.S. intends.

Q.2. Are these differences great enough to threaten the future of COCOM, or at least our Allies' willingness to continue to cooperate with the U.S. in controlling exports to the East?

A.2. There is a fundamental philosophical difference between the U.S. and its West European allies concerning trade with Eastern Europe. Rather than viewing trade as a threat to security, our West European allies see trade as a means for cooperation and insurance against hostility. This is one of the original principles guiding the creation of the European Community.

As I said in my statement, we believe that we are at a critical juncture in CoCom. The U.S. must assert its leadership in CoCom and come forth with significant reform proposals or we may face a serious situation. Unless the U.S. demonstrates flexibility, we are at risk of having CoCom exist in name only. Our allies may view it and, more importantly, treat CoCom as an irrelevant relic of the past. We support the U.S. efforts to preserve CoCom and believe that the Administration recognizes the seriousness of the situation.

Q.3. Do you believe our CoCom partners have adhered to CoCom rules generally or selectively? Do you know of any examples of European or Japanese manufacturers having sold products to Eastern Europe which U.S. exporters have been denied?

A.3. In general, our CoCom partners have adhered to CoCom rules; however, there is significant discretion provided the national government in administering the CoCom agreements. The U.S. generally applies the strictest interpretation of these agreements. Furthermore, the U.S. licensing system is fraught with bureaucratic gridlock which results in significant delays even when license are approved.

There are numerous examples, including the ones mentioned in the statements of Mr. Hough and Mr. Ryan concerning the sale of personal computers to Czechoslovakia and oscilloscopes, respectively. In addition to these specific cases, there are also numerous examples where U.S. companies are denied licenses to simply display and demonstrate their goods in Eastern Europe. These demonstrations do not constitute a sale and in general the U.S. company maintains title and control of these goods. Our CoCom counterparts are routinely granted permission to demonstrate their products. One U.S. company received a demonstration license for its product manufactured in Europe. Yet, the same product manufactured in the U.S. was denied a demonstration license by the U.S. government.

Just as significant as the denials are the delays which allow our competitors the advantage. When it takes twice as long to get a U.S. license as it does for our European and Japanese competitors to get licenses, customers are likely to turn to the supplier who can deliver promptly.

Q.4. Do you believe that publishing the CoCom industrial list (the list of "dual-use items with a commercial and possibly military application) and making it the only list the U.S. can use to control exports would help "level the playing field" for U.S. exporters?

A.4. Effective compliance requires complete understanding and knowledge of the rules. AEA has long supported CoCom transparency. We believe the publication of the control lists and all interpretive notes and classifications as well as a publication of CoCom action including policy and a sanitized version of licensing decisions will improve the effectiveness of CoCom.

Q.5. Is the U.S losing out on new markets, the U.S.S.R. and in Free World Countries because of exports controls?

A.5. Export controls have a direct effect on a U.S. exporters ability to enter into new markets and to sell its most competitive equipment. The failure of the U.S. export system to implement reforms mandated by Congress, to develop proposals for CoCom reform and to process licenses in a timely and responsible manner significantly deters our ability to compete in the global market place.